(25,165)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1916.

No. 399.

JOHN L. KETCHAM, JR., APPELLANT,

vs.

COLONEL BELL BURR, DAVID S. FRACKELTON, JAMES C. McGREGOR, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MICHIGAN.

INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., FEBRUARY 20, 1917.

1 *Bill of Complaint.*

In the District Court of the United States for the Northern Division of the Eastern District of Michigan.

In Equity, May Term, 1912.

JOHN L. KETCHAM, JR.,

vs.

COLONEL BELL BURR, DAVID S. FRACKELTON, JAMES E. MCGREGOR, James N. Buckham, Howard Mason, John C. Graves, John J. Carton, Colonel O. Swayze, Judge of the Probate Court, County of Genesee, State of Michigan; Trent Bowles, Register of the Probate Court, County of Genesee, State of Michigan; Oak Grove, a Corporation of the State of Michigan.

To the Judge of the District Court of the United States for the Northern Division, Eastern District of Michigan:

John L. Ketcham, Jr., a citizen of the State of Indiana and a resident of the City of Indianapolis, County of Marion, in said state, brings this his Bill of Complaint against Colonel Bell Burr, James E. McGregor, James N. Buckham, Howard Mason, John C. Graves, Trent Bowles who is Register of the Probate Court of the County of Genesee, State of Michigan, Colonel O. Swayze, who is Judge of the said Probate Court, and John J. Carton, who, all of the defendants above named, are residents of the City of Flint, County of Genesee, State of Michigan; and against David S. Frackelton, a resident of the City of Fenton, in the said County and State, and who, all of the above named defendants are citizens of the said state of Michigan; and against Oak Grove, a corporation, organized under the laws of the State of Michigan, and which has its principal place of business in the said city of Flint, in the said county of Genesee and state of Michigan.

2 1. And thereupon your orator complains and says that the above named defendant Oak Grove is a corporation organized under the laws of Michigan, and operated under Act 108 of the Public Acts of the Legislature of the State of Michigan passed at the regular session of 1893, entitled, "An act to provide a general law under which corporations may be formed to carry on institutions for the treatment of disease and for instruction therein, and in hygiene," and published in the Compiled Laws of Michigan, 1897, in section 8426 et seq.; that the said Oak Grove has its principal place of business in the City of Flint, county of Genesee, in the said state; that the above named defendant Colonel Bell Burr was throughout the year 1906, and is at the present time the medical director, superintendent and general manager of the said Oak Grove corporation, and of the asylum for the insane which the said Oak

Grove owns and operates in the said City of Flint; that the above named defendant Howard Mason is the supervisor, or head and chief of the attendants, guards and employees of the said Oak Grove and its said asylum, and in his said capacity is charged with the physical custody of the inmates of the said Oak Grove, and the said Mason occupied the said position throughout the month of May, 1906, and continuously since then till the present time; that the above named defendant David S. Frackelton was throughout the month of May, 1906, the Judge of the Probate Court of the County of Genesee, State of Michigan; that the above named defendant John C. Graves was the Register of the said Probate Court during the same period, May, 1906; that at the present time, the above named defendant Colonel O. Swayze is the judge of the said Probate Court and the above named defendant Trent Bowles is the Register thereof; that the defendant Joh- J. Carton is an attorney at
3 law of the courts and state of Michigan; that the defendants James N. Buckham and James E. McGregor are physicians; that all of the above named persons defendant are citizens of the state of Michigan, and saving and excepting only the defendant David S. Frackelton, are residents of the City of Flint, County of Genesee, in said State, and that the said David S. Frackelton is a resident of the City of Fenton in the said county and state.

2. Your orator further says that during the time from and including the month of May, 1906, up to and including the present time there are and have been many assistant superintendents and other officers of the said Oak Grove, and of its said asylum in the City of Flint; that the names and locations of the said officers, other than the defendant- Burr and Herbert H. Hills and Charles B. Macartney, are unknown to your orator; that the present location of the said Macartney is unknown to your orator and the said Hills is not a resident of the Northern Division of the Eastern District of Michigan; that the interests of the said Hills, Macartney and all the other officers of the said Oak Grove and its said asylum during the period herein stated are similar to, identical with, and in no wise diverse from the interests of the defendant Burr, and that the said Burr and his interests in this bill can and do equitably represent the said officers and their interests therein; that the said officers are very numerous and cannot be made party to this bill without great and manifest inconvenience and oppressive delay; and that for the foregoing reasons they are not made party to this bill.

3. Your orator further says that from and including the month of May, 1906, up to and including the present time there are and have been many attendants guards and employes of the said Oak Grove and of its said asylum, that they are very numerous, and that other than the defendant Mason your orator does not know the names and locations of the said attendants, guards and em-
4 ployees; and that their interests in this bill are similar to, identical with, and in no wise diverse from the interests therein of the said Mason, and the said Mason and his interests can and do in this action equitably represent the said guards, attendants and employees and their interests therein; and that the said guards,

attendants, and employees cannot be made party to this bill without great and manifest inconvenience and oppressive delay, and for all the reasons stated in this paragraph they are not made party to this bill.

4. That on or about the fourth day of May, 1906, in the said city of Flint, County of Genesee and State of Michigan, the defendant Burr did, in his capacity as medical director of the said Oak Grove, petition to the defendant Frackelton for an inquisition by the said Frackelton as Judge of the Probate Court of the said county into the sanity of your orator, and an order committing your orator to the asylum for the insane owned and operated by the said Oak Grove in the said City of Flint. That the defendant Frackelton did, on the same day, by his judicial order made in the said Probate court, appoint the defendants James N. Buckham and James E. McGregor as examining physicians, to examine your orator as to such alleged insanity; that the said Frackelton did appoint a day for a hearing in court, serve your orator with notice thereof, and on or about the 18th and 19th days of May, 1906, did hold a pretended hearing in the said probate court; that at the pretended hearing so held, the said Buckham and McGregor, so acting as examining physicians under the said order, did certify that your orator was insane, and thereupon the said Frackelton did adjudicate that your orator was insane and commit him to the asylum aforesaid.

5. That the defendants committed their acts described in paragraph 4, foregoing, to-wit, the petition, the order appointing physicians, the order for hearing, notice thereof and the service of the said notice, the hearing, the certification of insanity, the adjudication of insanity, the order of committment and the other acts done incidentally to the said hearing and adjudication, and all of the said acts, under color of the laws of the state of Michigan, and more especially of Public Act number 217 of the Acts of the Legislature of the said state, passed at the regular legislative session of 1903.

6. That the above named defendants, Burr, Mason, Frackelton, Buckham and McGregor, together with the defendant Carton, committed the said acts as described in paragraphs numbered 4 and 5 respectively, foregoing, and all of the said acts, fraudulently and feloniously, contrary to the laws of the State of Michigan and of the United States, and their said acts are of no force and effect in law, but in law are null and void; and the said acts are so null and void, and committed in manner fraudulent and felonious for the following reasons, viz.:

That your orator is, and has always been a citizen and resident of the state of Indiana, and previous to the pretended hearing above described had never been nor contemplated going into the state of Michigan save at one time twenty years before, when he passed through the said state, and the said act had not, and was not alleged to have, any bearing on the present matter. That on or about May 2, 1906, at about the hour of eight o'clock in the evening, certain persons, namely Ralph M. Ketcham, Eleanor Ketcham, John L. Ketcham and others, did inveigle and induce your orator

to come to a certain room, the office of one Edward Daniels in the Newton Claypool Building, on the corner of Ohio and Pennsylvania streets, in the City of Indianapolis and county of Marion and state of Indiana. That then and there certain persons, to-wit, Jeremiah E. Kinney, Timothy Splan, David M. Ketcham, William C. Ketcham and Ralph M. Ketcham did seize your orator and convey him secretly and by force to the railway station in the said city called the Union Station, and to a railway car therein, and the
6 said Kinney, Splan, David M. Ketcham and Ralph M. Ketcham, did thereupon, and by force, and in the said railway car and in other railway cars, convey your orator to the above described city of Flint, Michigan, and from the railway station in the said Flint, by means of a carriage directly to the said Oak Grove, and to the forcible custody of the officers and attendants thereof. That immediately upon the arrival at Oak Grove of the party above described, the said David M. Ketcham and Ralph M. Ketcham did request the defendant Burr and other officers and attendants of the said Oak Grove to imprison your orator till such time as they could procure from the Judge of the Probate Court of the County of Genesee an order authorizing them so to imprison your orator, and the said Ketcham and Ketcham did further request the said Burr to petition to the said judge of the Probate Court for an adjudication of insanity directed against your orator and an order committing him permanently to the custody of the said Oak Grove and its officers and attendants under color of the laws of Michigan. That at the time your orator was brought to the said Oak Grove as above described, the said David M. Ketcham and Ralph M. Ketcham fully apprised the defendants Burr, Mason and the other officers and attendants of Oak Grove concerning the manner in which your orator had been taken from the state of his domicile, and explained to the said officers and attendants that their purpose in bringing your orator to Oak Grove was to procure, pursuant to the designs of themselves and their confederates, the imprisonment of your orator in the said Oak Grove under color of the laws of Michigan. That the said officers and attendants of Oak Grove thereupon joined themselves with the said unlawful purposes and designs, immediately imprisoned your orator, and the said Burr presented the petition, and procured and furthered the hearing, adjudication and other acts incidental thereto described in paragraph 4, in furtherance of the said purposes and designs to which they joined themselves as described. That the defendants Burr, Mason
7 and Oak Grove corporation, together with Ralph M. Ketcham, David M. Ketcham and others in furtherance of the said unlawful designs, did employ the defendant John J. Carton to act as attorney in procuring the hearing described in paragraph 4, and in procuring and furthering the said adjudication, commitment and acts incidental thereto above described. That the said Carton did accept the said employment, and in furtherance of the said unlawful designs and in accordance with his said employment, did procure and further the said unlawful hearing, adjudication and acts incidental thereto. That all of the said acts of the said Ralph

M. Ketcham, David M. Ketcham, Eleanor Ketcham, John L. Ketcham William C. Ketcham, Jeremiah E. Kinney, Timothy Splan, Howard Mason, Colonel Bell Burr, Oak Grove corporation and others, were committed by them as above described in pursuance of a conspiracy, which they formed among themselves and with others for the furtherance of the unlawful designs above described in this paragraph, and of other unlawful designs. That in the course of the said pretended hearing held in the Probate Court at Flint, as described in paragraph 4, and in the presence of the defendants Burr, Mason, Frackelton Buckham, McGregor and Carton, the said Ralph M. Ketcham did under oath confess the fact that he and his co-conspirators had brought your orator to the City of Flint in the manner and for the purposes described in this paragraph, and the said Ralph M. Ketcham did fully apprise them, the said defendants, Burr, Mason, Frackelton, Carton, Buckham and McGregor, of the conspiracy herein described, of the purposes and designs thereof, and of the acts in pursuance thereof which up till that time the conspirators had committed; that at the same place and in the presence of the same persons, and at very nearly the same time, David M. Ketcham, conspirator above named, did, by his confession given under oath, further apprise them, the said defendants as named in this paragraph, of the said conspiracy, the designs thereof, and the acts committed pursuant thereto. That

8 the said defendants named in this paragraph heard and fully understood the said confessions, and knew all the facts and circumstances which rendered fraudulent and unlawful the said hearing, adjudication, and acts incident thereto; that the said defendants thereupon joined themselves with the said conspiracy, and acted in concert pursuant thereto, with full knowledge of the fraudulent, unlawful and felonious nature of their acts, and so acting, did continue to hold and did consummate and complete the said hearing, and did, each by his several acts in furtherance thereof, certify and adjudicate that your orator was insane and commit him to the said Oak Grove as an insane person, as above described in paragraph 4. And the said defendants and their co-conspirators, as named in this paragraph, held and furthered the said pretended hearing and committed the acts incidental thereto as above described in pursuance of a further design to which the said defendants and conspirators joined themselves, to-wit, first to imprison your orator without lawful authority in the state of Michigan, and feloniously contrary to the laws thereof, and second to threaten, intimidate, injure and oppress your orator in the free exercise of certain rights secured to him by the constitution and laws of the United States, contrary to the laws of the United States and contrary to Section 5508 of the Revised Statutes thereof, in manner hereinafter described; and more particularly to threaten, intimidate, injure and oppress your orator in the free exercise and enjoyment of his right that his liberty shall not be restricted under color of the laws of any state, except by due process of law, and to commit the said violations of the said right in the manner, under the circumstances and by reason of the facts hereinafter related in paragraphs

7, 8, 9, 10 and 12 respectively; and to deprive your orator of his property without due process of law in the manner described in paragraph 11, to commit the said violations of further constitutional rights in manner described in paragraph 12; and in
9 this particular instance to injure and oppress your orator in his right to the equal protection of the laws of Michigan, and of the right that, being a citizen of Indiana temporarily in Michigan, he shall be entitled to all the privileges and immunities of the citizens of the State of Michigan, and to commit the said violation of the said rights by means of the enforcement of Public Act number 217 of the Acts of the Legislature of Michigan passed at the regular session of 1903, and section 26 and other sections of the said Act, and other laws of the said state, in such manner as to classify persons in the said state alleged to be insane in the following classes, and so to differentiate their treatment and rights in the following manner, viz.—first residents of the State of Michigan, who can be subjected to an inquisition as to their sanity in the court of the County wherein they reside, and only in such courts; second, non-residents of the state who have no such rights; and third, non-residents of the state, who, by reason of having been victims of the crime of kidnapping, or of fraudulent inveiglement, or in other manner, happen at the time of the allegation of their insanity to be held by any private institution, hospital, home or retreat, for the care and treatment of mental diseases, which said class of non-residents are compelled to defend themselves as to their sanity in the courts of the county in which the officers of the said institutions choose to locate their said institutions and to hold the said non-resident belonging to this class and by means of the said laws, and under colour of their enforcement, to make further classifications of persons found within the state of Michigan as follows:—class first, persons who are officers of private institutions for the care of the insane, who may locate their said institutions in any county in whose courts they may happen to have corrupt influence, or for any other reason desire to locate, and thereafter petition to the courts of that county in which they have chosen to locate, for authority to seize and hold temporarily any person not a resident of
10 the said state whose relatives have requested such action on the part of the said officer or officers, and which said officer or officers may, within thirty days after such seizure, make petition to the said courts of the county so selected, for further authority under the said laws to hold the said non-residents permanently; and class-second, residents of the said state, who are immune from being seized and carried to any private institution for the care of the insane in the said state at the pleasure of an officers thereof, or of any other person, and tried for their sanity in the county and tribunal selected by the said officer, and from being imprisoned in any of the said institutions without due process of law in the courts of the county in which the said residents of Michigan make their respective domiciles, and by whose courts, justice and opinion they have elected to abide by their selection of residence and presence therein; and third, the class of non-residents of the said state, who

must submit to being seized and carried to and held by such private institutions and their officers, in whatever part of the said state the said institutions and officers may select to locate and make their place of business, and must further submit to being tried for their sanity, and to being placed in jeopardy of perpetual imprisonment, in tribunals and in communities in which they, the said non-residents, have never chosen to be present, but which are selected by the said institutions and officers. And the said conspirators purposed to injure and oppress your orator in the exercise of the two constitutional rights last named in this paragraph by enforcing the said laws in the said manner against him as a member of the third class in each of the two above classifications.

11 7. That the acts of the said defendants in paragraphs 4, 5 and 6, respectively, are in law null and void, and were committed in manner felonious as described in paragraph 6, for the following further reasons, viz., that the said Burr, Frackelton, Mason, Carton, Buckham, and McGregor were present throughout the entire course of the pretended hearing described in paragraph 4, and heard all the allegations which were made and the evidence which was given in the course of the said hearing. That at the said hearing no allegation was made by any person, and no evidence of any kind was presented, which in any way tended to put forth any proof or pretence that it was necessary or lawful for the state of Michigan or any official in its behalf to exercise the authority of the said state against your orator, whether to restrict his liberty, adjudicate his status as being sane or insane, or make other adjudication or exercise of authority against him, in the enforcement of the right of the said state to guard the safety, health, good morals or good order of the state and the persons within its boundaries, or in the enforcement of any other police powers of the said state, or on any pretext of any kind whatever; and that at the said hearing there was no allegation, proof, or pretence on the part of anyone concerned therein that the said defendants and their co-conspirators were acting or claiming to act under any of the police powers of the said state. That the said defendants and their co-conspirators well knew that proofs, evidence, allegations and pretences of the nature herein described were wholly wanting at the said hearing and well knew that your orator was not a resident of Michigan but of Indiana, yet nevertheless, the said defendants proceeded with and consummated their acts as described in paragraphs 4, 5, and 6, respectively, in manner and with intent felonious as described in paragraph 6.

8. That by reason of the facts stated in paragraphs 4, 5,
12 6, 7, respectively, and more especially by reason of the fraud therein stated, to-wit, first, the fraud in that your orator was unlawfully brought from Indiana, the state of his domicile, into Michigan for this express purpose of procuring against him an adjudication of his status by the laws of Michigan in contravention *to* the laws of Indiana; and second, the fraud in that there was not, in the course of the pretended hearing at Flint, any allegation made, or any evidence presented which in any way tended to lend the authority of law to the state of Michigan or to any official thereof,

or to the defendant Frackelton to assume jurisdiction of the subject-matter of the said pretended hearing and inquisition, to-wit, the status of your orator, whether sane or insane, and whether sui juris or no; and by reason of all the foregoing, the Probate Court of the county of Genesee, State of Michigan, has never acquired jurisdiction of the subject-matter of the said pretended hearing, as aforesaid, and the said status of your orator has never been passed upon in a court of law.

9. That the said defendants Frackelton, Buckham and McGregor, though acting unlawfully therein did make, hold, and perform their several acts as above described, to-wit, the hearing, certification of insanity, the adjudication thereof, the order of confinement and other acts appurtenant thereto, in due and lawful form. That the defendant Frackelton did order the defendant John C. Graves to enter the said pretended judicial acts in and among the records of the said probate court of Genesee County, State of Michigan, and the said defendant Graves, acting in the exercise of his office as register of the said court, did so enter and record the said acts. That the defendant Trent Bowles, in the exercise of his present office as register of the said court holds and maintains the said records and entries upon and among the records of the said court. That by
13 reason of the fact that the said records and entries are found among the records of the said court, and that the said Bowles maintains them there, the defendant Colonel O. Swayze, in the exercise of his present office as judge of the said court, assumes and pretends to hold your orator in his custody, to possess the right and power further to adjudicate his status, restrict his liberties, and in other ways to exercise lawful authority over your orator and his rights and privileges. That the said defendants Bowles, Swayze and Graves did commit, and do now commit their said acts under color of the laws of the state of Michigan, and more especially under color of Public Act number 217 of the acts of the legislature of the said state passed at the regular session of 1903.

10. That by reason of the fact that the records and entries in the matter of the pretended hearing described in paragraph 4 were made by the defendants Frackelton and Graves, and are maintained by the defendants Bowles and Swayze in due and lawful form, and therefore are entitled to full faith and credit in all the states and territories and in the courts thereof, and of the United States till set aside, and are binding on all persons not apprised of the facts and circumstances which render them null and void, and for all the further reasons hereinbefore stated, and hereinafter in paragraphs 11 and 12 respectively, the defendants in this bill, by their acts and confederation as described in paragraphs 4, 5, 6, 7, 8 and 9, foregoing, and in paragraphs 11 and 12 following, respectively, have subjected and do now subject your orator, under color of the laws of the state of Michigan, to the deprivation of rights and privileges secured to him by the constitution and laws of the United States, which said rights and privileges are enumerated and described in paragraph 6 foregoing, and in paragraphs 11 and 12 following, and to the further deprivation of the right, secured to him

by section 5508 of the Revised Statutes of the United States,
14 to exercise and enjoy all of the said rights free from threat, intimidation, injury or oppression, the result of a conspiracy to that end.

11. That on or about May 3, 1906, in a railway car on the Pere Marquette Railroad, and in the County of Genesee and State of Michigan, the above named conspirators David M. Ketcham, Ralph M. Ketcham, Jeremiah E. Kinney and Timothy Splan, did by force and fraud rob your orator of certain letters, writings and documents and papers. That the said conspirators committed their said robbery for the purpose of furthering their said conspiracy to procure against your orator fraudulent judicial acts on the part of the defendants, as above described in paragraphs 4, 5, and 6 respectively, and seized and retained the said letters writings, documents and papers under color of the laws of the state of Michigan, and under color of right under the said laws to seize and hold the said documents and other papers as evidence against your orator, and in the course of his arrests and detention under a charge of insanity which the said conspirators purposed to bring against your orator, and did bring as above described. That the said David M. Ketcham, Ralph M. Ketcham, Jeremiah E. Kinney and Timothy Splan and their co-conspirators and confederates did, previous to the pretended hearing described in paragraph 4, and incident thereto, and in furtherance thereof, and for use thereat as exhibits and for other purposes, deliver to the defendant Carton certain of the said documents and other papers stolen as described. That the said Carton did, incident to the said pretended hearing and in furtherance thereof, deliver to the defendant Frackelton certain of the said documents and papers for the purposes above described. That the said Carton and Frackelton and the other defendants and conspirators, have never restored to your orator any of the documents and papers above named, but have retained them in their possession since that time, or made dis-
15 position of them unknown to your orator. And the said defendants committed and do now commit all of the said acts described in this paragraph under color of the laws of the State of Michigan. That by reason of the facts recited in this paragraph and all the facts recited in this bill, the said defendants have subjected and do now subject your orator to the deprivation of the said writings, letters, documents and papers, his lawful property, under color of the laws of Michigan, yet without due process of law.

12. That the said defendants, Burr, Mason, Frackelton, Buckham, McGregor and Carton, together with their co-conspirators William C. Ketcham, David M. Ketcham, Eleanor Ketcham, Ralph M. Ketcham, John L. Ketcham, Jeremiah E. Kinney, Timothy Splan and others, committed their acts as described in the foregoing, and each of them committed his several acts as above described, in pursuance of a common design and conspiracy to which they had joined themselves, to-wit, a single, definite, common, purpose and design to commit a certain infamous crime, feloniously contrary to section 5508 of the Revised Statutes of the United States, namely to threaten, intimidate, injure and oppress your orator in the free exercise and en-

joyment of certain rights secured to him by the constitution and laws of the United States, namely, first, the right that as a citizen of the state of Indiana, your orator should be entitled when temporarily within the boundaries of another state, to all privileges and immunities of the citizens of the state in which he is so temporarily sojourning; second, that the rights accruing to your orator as a citizen of the United States shall not be abridged under color of the enforcement of any law of a state; third: that he shall not be denied under color of the laws of any state, the equal protection of the said laws; fourth, that he shall not be deprived of liberty or property without due process of law; fifth, of all the rights to which your orator is entitled under the constitution and laws of the United States, by reason of the
16 fact that he is a citizen thereof sui juris, which said rights are not herein enumerated for the avoidance of prolixity in this bill. That acting in concert under the said general conspiracy, the said defendants and their co-conspirators have by their acts as hereinbefore described deprived your orator of and injured and oppressed him in the free exercise of, the first and third of the rights herein enumerated, in the manner described in paragraph 6, and by the enforcement of the laws of Michigan in such way as to make different classifications of, and extend different legal rights to, residents and non-residents of the said state, as described in the said paragraph; in addition thereto, of the third of the said rights as herein enumerated, by their enforcement of the said laws so as to distinguish between non-residents of the state of Michigan who happen to be within a private institution for mental disease, and other classes of non-residents, as said enforcement is described in paragraph 6; of the second of the said rights as herein enumerated by the manner in which they have enforced, as described in paragraphs 4, 5, and 6, respectively,— the laws of Michigan, against your orator so as without lawful authority, to bar him from filing or maintaining an action at law in the Courts of the United States, from taking title to lands or mines under the laws of the United States and of the territories thereof, and from other privileges accruing to your orator from the same source; of the fourth of the said rights, of which he was deprived by the unlawful seizure and retention of his property as described in paragraph 11, in the unlawful restriction of his personal liberty as described in paragraphs 4, 5, and 6 respectively, and in the unlawful adjudication and recording against your orator of the disability of insanity, and in the maintaining of such records as above described, whereby he is at the present time placed under dis-
17 ability in the state of his domicile and all other states to exercise the rights and privileges, which, within the meaning and intent of the constitution and laws of the United States, constitute, and are included within the term liberty, namely, the right to vote, to marry, to make contracts, engage in business, hold property and take and give title to the same, to commence and maintain actions in the Courts of the various states and territories and of the United States, and many other rights and privileges which are lawfully his as a citizen of Indiana and of the United States. That the said conspirators committed their above described acts pursuant to their

said conspiracy with the further design to continue their conspiracy and acts thereunder indefinitely, and in such manner and by such means as should seem expedient to them at the time. That other than the conspirators named in this paragraph, many persons joined themselves to the said conspiracy, and pursuant thereto committed many acts at various and widely separated places, and throughout an extended interval of time. That the acts hereinbefore described in the bill on the part of the defendants and their co-conspirators were committed by them for the more especial purpose, incident to their said conspiracy, of imprisoning your orator thcroughout his life under color of an adjudication of insanity, and of otherwise placing legal and physical impediments in his way in order to prevent him from prosecuting under the criminal laws, and from securing redress under the civil laws of the various states and of the United States, against the parties to the said conspiracy for their acts committed pursuant thereto previous to the occurrences hereinbefore described in this bill. That among the acts committed by parties to the said conspiracy previous to the acts hereinbefore described, and at other times, were acts described in the following paragraphs 13 to 26 inclusive.

18 13. That William G. Stearns, a citizen of the State of Illinois, and resident in the City of Evanston therein, joined himself to the said conspiracy on or about the 26th day of October, 1904; that the said Stearns was at that time the medical superintendent of the Oakwood Retreat Association, a corporation organized under the laws of the state of Wisconsin, which had its principla place of business in the City of Lake Geneva, county of Walworth, in said state, and at the said place owned and operated both a sanitarium and an asylum for the insane, of which said sanitarium and asylum the said Stearns was the medical superintendent and general manager. That on or about the said 26th day of October, in a building and institution known as the Presbyterian Hospital, in the City of Chicago and state of Illinois, the said Stearns did inveigle and induce your orator to leave the said building and come to the said City of Lake Geneva, and enter the said sanitarium therein. That for the purpose of so inveigling your orator the said Stearns made, with fraudulent and felonious intent, numerous false representations, among which he represented to your orator that he intended to give your orator medical treatment in the said sanitarium, whereas in fact the said Stearns intended only to defraud your orator, extort money from him by force and threats and trick and device, imprison, assault and otherwise abuse him, fabricate evidence and suborn false testimony against him, procure a fraudulent and unlawful inquisition and adjudication of insanity against him in the Courts of Wisconsin, and to perpetrate other crimes and abuses.

14. That the said Stearns, together with one Charles W. Hack, a citizen of the state of Minnesota and resident of the city of Minneapolis in the said state together with George Donohoe and Goodrich H. Snow, of whom the two last named were assistant superintendents of the said Oakwood Retreat Association, and many

19 other persons, did, subsequent to October 27th, and for a continuous period thereafter up till the month of March, 1905 excepting during such time as your orator by force escaped, as hereinafter described, *did* imprison your orator in the said city of Lake Geneva, and at various times in each of two institutions therein named owned and operated by the said Oakwood Retreat Association, and known under their respective names of Lakeside Sanitarium and Oakwood Retreat. That the said Stearns and his co-conspirators purposed by their said imprisonment of your orator to extort money from him by trick and device, fraud, force and threats, to procure false allegations and testimony that your orator was insane, and to fabricate arrange, and surround your orator with circumstances to corroborate the said false allegations and testimony, and to make it appear, through such false allegations and testimony and such circumstances falsely fabricated and arranged, that your orator was insane. That the said conspirators did imprison your orator falsely and feloniously contrary to the laws of the State of Wisconsin and the laws of the United States and did consummate their purposes above described, with the further purpose to procure a fraudulent and unlawful inquisition of insanity and adjudication thereof directed against your orator, in the county court of the county of Walworth in the said state, and before one Jay F. Lyon, the judge thereof, and thereafter to continue the said false and unlawful imprisonment under color of the laws of the State of Wisconsin, and further to rob, abuse and extort money from your orator. That the said Stearns, Snow, Donohoe, Hack and others did consummate their said purpose and designs, and did imprison your orator in the said City of Lake Geneva and respectively in the two buildings above named, first in Lakeside Sanitarium, and then in Oakwood Retreat, continuously from October 27th, 1904, till July 8th, 1905, without any color of law whatsoever, and on the said July 8th, 1905, did procure
20 in furtherance of their said purposes and in confederation with others, a fraudulent and unlawful order under color of the laws of the said State of Wisconsin in directing them and the said Oakwood Retreat Association to hold your orator under the authority of the said Jay F. Lyon, temporarily pending an inquisition by law, in the said County Court of the county of Walworth in the said state, into the sanity of your orator. That thereafter and until the 25th day *fo* July, 1905, the said conspirators did imprison your orator under color of the said unlawful order.

15. That in pursuance of the common design described in paragraph 12, certain persons, to-wit, J. W. Sherman, Will H. Hammersley, and W. T. Durham, all of whom were citizens of Wisconsin and resided therein at that time, did, in the said county of Walworth and said s-ate, on the 8th day of July, 1905, make a false affidavit to the effect that your orator was supposed and believed to be insane, and so supposed and believed to be by them, whereas neither they themselves nor anyone else supposed or believed anything of the kind and they, the said Sherman, Hammersley and Durham, never saw your orator, and had no knowledge of him, except that they were suborned and procured to make the said false oath. That

the said Sherman, Hammersley and Durham, made their said false oath in the presence of one Franklin J. Tyrrell, who was a citizen of Wisconsin and resident of the city of Lake Geneva therein at that time, joined the said conspiracy, and in pursuance thereof procured and suborned the said Sherman, Hammersley and Durham to make the said false oath, well knowing it to be false.

16. That William A. Ketcham and John L. Ketcham are citizens of the State of Indiana, and residents of the city of Indianapolis therein, and that they did, in the county of Marion therein, and in the presence of one Arie Dazey, a notary public in and for
21 the *the* said state, on the 11th day of July, 1905, make a false affidavit that they were the friends of your orator, and that confinement in the said Oakwood Retreat would be more beneficial to your orator and more conducive to his ultimate recovery *that* confinement in a public insane asylum, whereas the said John L. Ketcham and William A. Ketcham had no reason to believe that your orator was insane, did not so believe, were not his friends, but were actuated in their said acts solely by malice and revenge, had not spoken with him for an extended period, neither knew nor believed anything regarding the relative chances of alleged recovery of your orator in the said Oakwood Retreat and a public insane asylum, respectively, never were near Oakwood Retreat, knew nothing of it, were equally ignorant of condition in any public insane asylum, and had no knowledge or belief of any of the said matters with regard to which they made their said false oath.

17. That the National Surety Company is a corporation organized under the laws of New York, that William H. Drapier, Jr., is a citizen of Indiana and resident in the City of Indianapolis therein, and is authorized by the said Company to transact business as its attorney in fact and in its behalf. That on the 11th day of July, 1905, Archibald Church was the president of the said Oakwood Retreat Association, and Josiah Barfield was the Secretary and Treasurer thereof. That on the said 11th day of July, 1905, the above named Franklin J. Tyrrell, John L. Ketcham, Archibald Church, Josiah Barfield, William H. Drapier, Jr., National Surety Company and Oakwood Retreat Association, acting in concert, did file in the office of the Secretary of State of the state of Wisconsin, and with F. M. Miner, who was at that time the Assistant Secretary of said State, a bond as required by the laws of Wisconsin, and by Section 1786*a* of
22 Chapter 86 of the Statutes of 1898 thereof, which said bond was conditioned to protect the said state, and every county, city, town and village therein, against expense in case your orator should become a pauper therein.

18. That in the county court of the said county of Walworth, on the 8th day of July, 1905, the said Jay F. Lyon did make a pretended appointment of James C. Reynolds and W. H. Macdonald, who, both of the last named, were citizens of Wisconsin and physicians resident in the city of Lake Geneva therein, and did order the said Reynolds and Macdonald, so appointed, to examine your orator, inquire, and report upon his mental condition. That pursuant to the said pretended appointment and order the said Reynolds

and Macdonald did, in the said County of Walworth, make pretended examination into the mental condition of your orator, and on the 12th day of July, 1905, did prepare and make oath to a report on the said matter, and did later deliver the said report to the said Lyon. That the said Reynolds and Macdonald did knowlingly and wilfully embody in their sworn *sworn* report so made and delivered a great number of false reports and statements.

19. That on the 25th day of July, 1905, in the said county court of Walworth county, the said Jay F. Lyon, who was at that time the duly and lawfully constituted judge of the said court, did hold a pretended hearing and inquisition into the mental condition of your orator. That in the course of the said pretended hearing the said Lyon did make a certain finding, to-wit, that the residence of your orator was not ascertained. That there was before the said Lyon at the time he made the said finding, and duly presented to him in the course of the said pretended hearing, a direct, positive, clear and complete statement that your orator was a resident of Indianapolis, State of Indiana, and a citizen of said state. That the said statement
23 was presented in evidence to the said Lyon, and -as received and filed by him, and there was not presented to the said Lyon, in evidence or in any other way, at the said pretended hearing or at any time before or after, any evidence or statement which in any way modified, qualified, contradicted or denied, added to or subtracted from, the said item of evidence so presented to the said Lyon, on the matter of the residence and citizenship of your orator. Yet, nevertheless, squarely in the face of and contrary to this said complete, convincing and positive evidence above described as to the residence and citizenship of your orator, the said Jay F. Lyon, at his pretended hearing so held, made his finding and adjudication that the residence of your orator was not ascertained. And the said Lyon made the said false finding willfully and knowingly with felonious intent pursuant to the conspiracy above described.

20. That at the pretended hearing the said Lyon did make further finding and adjudication that your orator was insane, and did commit him to the custody of the said Oakwood Retreat Association. That the acts of the said Lyon were, and were well known by the said Lyon to be, in law, null and void, and fraudulent and unlawful, and contrary to the laws of Wisconsin and of the United States, for the following reasons:—

That by the laws of the state of Wisconsin, the county court of Walworth County in said state is a court of subordinate, inferior and limited jurisdiction. That by the laws of Wisconsin and of the United States, an adjudication on the part of any court of such a nature must show on the face of the record thereof all of the facts required by law to give the court jurisdiction in its adjudication, and where such recitement of facts is wanting in such record, such adjudication is void in law, and all persons acting thereunder are apprised of its nullity. That the said Lyon embodied in his said record the adjudication that the residence of your orator was not ascertained, and thereby placed in his said record a patent ambiguity on the subject of the residence of your orator, in the face of

24 which recitement on the subject of residence, no intendment of law will lie to supply the presumption that your orator was a resident of Wisconsin. That after the said Lyon in such manner failed to show on the face of his said record the fact that he had jurisdiction to adjudicate the status of your orator on the ground that your orator was a resident of Wisconsin, as above described, the said Lyon further failed to make on the face of his said record any recitement which showed, or in any manner might be construed or intended to show, that he and the said court had jurisdiction to make the said adjudication on the ground that it was necessary and proper under the exercise of the police powers of the State of Wisconsin, as such police powers are hereinbefore described in paragraph 7 in this bill, to-wit, the power to safeguard the health, good morals, good order or safety of the said state, or of any person within its boundaries, and other police powers. That furthermore, and independently of whether the said court was or was not a court of limited and inferior jurisdiction, the said Lyon, on the face of his said record of adjudication, made recitements of jurisdictional fact which showed specifically that under the laws of Wisconsin and of the United States, he and the said court did not have jurisdiction to make the said adjudication, and did make such recitements in the following manner, viz., as above described he made on his said record recitements on the point of residence which showed that jurisdiction could not be assumed on the ground that your orator was a resident of Wisconsin, and the said Lyon further embodied in his said record recitements of jurisdictional fact as to the conduct of your orator in Wisconsin which showed that jurisdiction of the permanent status of your orator was not and could not be assumed in the proper exercise of the police powers of the said state, and by his said record further showed that he had assumed jurisdiction of the permanent status of your orator, and in a personal pro-

25 ceeding. That under the laws of Wisconsin and of the United States, the said Lyon and the said county court had no power to assume jurisdiction over the permanent status of your orator on any ground other that that your orator was a resident of Wisconsin or had so conducted himself therein that it became necessary and proper for the said state to exercise its police powers against him. That the said Lyon and his co-conspirators above named, by the said adjudication and acts thereun-er, and by the acts described in paragraph 14, foregoing, acted in concert to threaten, intimidate, injure and oppress your orator in the free exercise of his constitutional rights, and in the manner following: of the right that the privileges and immunities of your orator as a citizen of the United States as described in paragraph 12, foregoing, shall not be abridged under color of the laws of any state; of the right that, without due process of law, no state and no person acting under color of the laws thereof, shall deprive him of his liberty or of any of the rights incident thereto, which said right the said Lyon and his co-conspirators violated by the acts described in paragraph 14, and further by their said adjudication and acts thereunder; of his right to his lawful property, except when deprived thereof by the due process of

law, which said right the said conspirators violated by seizing his property and personal effects to the value of several hundred dollars and at the time of and in connection with their acts as described in paragraph 14, and by their further retention thereof under color of the authority of the said adjudication; of his right to the equal protection of the laws of Wisconsin, which said right the said Lyon and his co-conspirators violated by their acts described in paragraph 14, and further by their acts under the said adjudication and under color of, and by their means of enforcing, the laws of Wisconsin and more especially section 1786*a* of Chapter 86 of the Statutes of 1898 of the said state, and in such manner as, under the said laws to classify persons found within the boundaries of the said
26 state, and under such classification assign to them and enforce against them rights, privileges, immunities and disabilities as follows:—class first, officers and employees of corporations organized under the laws of Wisconsin for the care of the insane, which said class of persons are entitled under such classification and laws to seize and imprison, any person found within the state whom they choose, and to enforce their said seizure and imprisonment against such persons by any act of violence necessary to its accomplishment, provided only, that prior to such imprisonment some person be found who will style himself the friend of the person so imprisoned and request the said imprisonment; and the said class of persons may commit the said acts without any liability whatsoever under the criminal or civil laws of the said state, for such acts, prior to such time as the person so imprisoned shall procure from some judge of proper jurisdiction or from the body corporate organized under the laws of Wisconsin, and known as the State Board of Control of Wisconsin Reformatory, Charitable and Penal Institutions, an order prohibiting the said seizure and imprisonment, and thereafter without liability for any such acts committed prior to the receipt of the said order; class second, corporations for the care of the insane and stockholders therein, which said class are free from liability under the civil laws of the said state, from any action in damages for acts of the said officers and employees, when the said acts are committed in the manner and with the proviso above described; class third, other persons and corporations, which said class have no immunity under the said laws for any of their unlawful acts, prior to or subsequent to any order of prohibition on the part of any one, and which said persons belonging to this class must in addition submit to being seized by persons of the first class
27 or corporations of the second, carried to any part of the said state which may be selected by the said persons and corporations of the first and second classes, and imprisoned therein or tried for their sanity in the courts thereof, and, which such acts have been committed with the proviso above mentioned in the description of the first class, without any protection from the criminal laws or redress from the civil laws of the said state, except after, and for such of the said acts as are committed after, persons of the third class are able to procure to be delivered to the persons and corporations of the

first and second classes the orders prohibiting such acts, as above described; and against your orator as of the said third class.

21. That under the laws of Wisconsin, as stated in paragraph 20, there is organized a body corporate under the name of the Board of Control of Wisconsin Reformatory, Charitable and Penal Institutions. That it is the lawful duty of the said Board of Control to regulate all institutions within the said state of the character named in the title of the said Board and of all private institutions for the care of the insane, and to safeguard the inmates of any of the above institutions, and to order the release of any person unlawfully held therein, and to enforce their said order, and in other manner to provide for the humane treatment of the said inmates, and to enforce the observance of law on the part of the said institutions. That by the law of the said state three members of the said Board constitute a quorum thereof, and may transact business in its name. That on August 1st, 1905, in the city of Madison in said state, and in the offices of the said Board, four of the duly constituted members thereof, to-wit, Gustave Kusterman of Green Bay, Wisconsin, Allan D. Conover of Madison, L. B. Dresser of Dresser Junction, and Harvey Clark, all of whom were citizens and residents of Wisconsin, acting as a quorum of the said Board, and at
28 a duly called meeting thereof, were fully apprised by the said Lyon of his said adjudication and inquisition, and of all the acts which had been committed incident thereto, and were well apprised of the unlawful and felonious character of the said acts, yet nevertheless, acting severally and as a body corporate, did approve of, connive at and participate in the said adjudication and acts incident thereto of the said Lyon and his co-conspirators, and did notify the said Lyon of their approval and participation, and the said members of the Board of Control did join themselves to the said conspiracy and did participate in the continuance thereof.

22. That at the pretended hearing described in paragraphs 18 and 19, and in the course thereof, the said conspirators Donohoe and Reynolds did, in the presence of the said Lyon and Tyrrell, and under oath in the capacity of witness- at the said pretended hearing, make false statements in great number directed against your orator, and for the felonious purpose of furthering the said conspiracy, and of making it falsely appear on the records of testimony of the said pretended hearing that your orator was insane.

23. That subsequent to the said pretended hearing and adjudication, the said Stearns, Donohoe, Snow, and other officers and employees of the said Oakwood Retreat Association, in connivance with the said Hack, did imprison your orator in the said Oakwood Retreat under color of right according to the said adjudication and commitment by the said Lyon, and did endeavor to extort money from your orator, and did commit ma-y assaults and brutalities upon the person of your orator, and did by their said acts greatly endanger his life and impair his health, did threaten him with further assaults, with perpetual imprisonment, with death and make ma-y other threats against him in his presence, and did con-

tinue their threats and outrages from the date of the said adjudication till on or about the last day of November, 1905. That on or about the said last day of November, the said officers of Oakwood Retreat were replaced by Oscar A. King and other persons, and that the said Oscar A. King joined himself to the said conspiracy, together with the other persons newly appointed officers of Oakwood Retreat as aforesaid, and did continue the said imprisonment thereunder till about the tenth day of March, 1906.

24. That on or about the 15th day of September, 1905, your orator escaped from the said Oakwood Retreat, and made his way to the city of Chicago, Illinois, and the said Stearns and his co-conspirators thereupon employed a certain firm and co-partnership, which does business in the said City of Chicago under the firm name of Pinkerton's National Detective Agency, and the partners, officers and employees thereof, and more especially one J. H. Schumacher, who is a citizen of Illinois and a resident of the said city of Chicago, and who is and at that time was the general superintendent of the said firm, to aid the said conspirators in renewing the said unlawful imprisonment, and to search for, and inform the said conspirators of, the whereabouts of your orator. That the said firm and its co-partners, officers and employees did join themselves to the said conspiracy, and accept the said employment, and did act according thereto, and, pursuant to the said conspiracy and employment, did continue to render to their co-conspirators services till the fifteenth of March, 1906, or thereabouts and thereafter, for a period unknown to your orator.

25. That shortly after the date of the said escape, and on or about the 19th day of September, 1905, the said Stearns and his co-conspirators did suborn and procure certain persons, to-wit, the person by name unknown to your orator, who occupied the month of September, 1905, the position of Chief of Police of the city of Chicago, aforesaid, one John J. Halpin, a police officer, and other police officers of the said city, feloniously and unlawfully, and contrary to the laws of the states of Illinois and Wisconsin, and of the United States, to kidnap your orator from the said city of Chicago to the city of Lake Geneva aforesaid, and the said police officers of Chicago did accept the said employment and did, according as they had been suborned, procured and employed by the said Stearns, and together with the said Stearns and two employees of the said Oakwood Retreat Assocation, known to your orator only under their surnames of Peterson and Walker, did kidnap your orator from Chicago to the City of Lake Geneva, as aforesaid, and to Oakwood Retreat in the last named city.

26. That David M. Ketcham and others of the above named conspirators were in Indianapolis, Indiana, throughout April, 1906, and did employ one John Ray Newcomb, a citizen of Indiana and resident of the City of Indianapolis therein, who was at that time in the City of Boston and state of Massachusetts, together with one Edward B. Lane who was at that time a citizen of Massachusetts and resident of the said city of Boston, to follow and spy upon your orator in the said city of Boston, for the purpose of procuring in the said

city of Boston a fraudulent and unlawful adjudication of insanity directed against him. That the said Newcomb and Lane did accept the said employment and did according thereto, follow, spy upon and frequent the society of your orator for the purpose above described, and did conspire and consult together and take other steps for the purposes above described.

27. That the said David M. Ketcham and others of the above named conspirators, who were then in the City of Indianapolis, aforesaid, did on or about the 8th day of May, and again a second time on or about the 18th day of May, 1906, procure and employ the said Stearns to leave the state of Illinois and travel to
31 the said city of Flint, for the purpose of furthering the said conspiracy, and of making false statements and of giving false testimony pursuant thereto and in furtherance of the unlawful acts of the conspirators described in paragraphs 4, 5, and 6, respectively, and the said Stearns did accept the said employment and act according thereto as above described.

28. That on or about the 17th day of May, 1906, the said conspirators, David M. Ketcham, Eleanor Ketcham and John L. Ketcham, did, in the city of Indianapolis and state of Indiana suborn and employ one Edward F. Hodges, who is a citizen of Indiana, and resident of the City of Indianapolis therein, and the said John Ray Newcomb, to leave the said city of Indianapolis and travel to the city of Flint, aforesaid, for the purpose of furthering the said pretended hearing in the City of Flint, and of giving false testimony thereat. That the said David M. Ketcham did himself, on the said 8th day of May, 1906, and subsequently again on the said 17th day of May, or respectively about the said dates, twice leave the said city of Indianapolis and travel to the said city of Flint for the said purposes. And the said David M. Ketcham, on or about the said dates, did both times consummate in the said city of Flint his purposes as described in this paragraph. That furthermore the said John L. Ketcham, Ralph M. Ketcham, Edward F. Hodges and John Ray Newcomb, did, on or about the 18th day of May, 1906, leave Indianapolis, travel to Flint, and further the said conspiracy and hearing in Flint as was their purpose herein described.

29. That at the time your orator escaped from Oakwood Retreat, and was in Chicago, as described in paragraphs 24 and 25 respectively, and in the city jail or police station of the said city commonly known as the City Hall, the above named police officer of the said city, John J. Halpin, did say to your orator, and at the time when your orator made the demand to the police of the said city that they should not remove him therefrom to Wisconsin except on proper requisition from the authorities of the said state, "Extradition is all right, but that is for people who have not been convicted yet.
32 We never bother about extradition with these escapes, no policeman ever does. They are dead ones, and we just bounce them out anyhow." That at the time the said Halpin made his said statement, it was apparently true, and your orator believed it to be true, and for a long time thereafter he was prevented by the acts of

said conspirators from acquiring further and accurate information on the conduct of the police with regard to extradition.

30. That at the time of the unlawful kidnapping of your orator from Indianapolis to Flint as described in paragraph 6, the said conspirators Jeremiah E. Kinney and Timothy Splan were police officers of the said city of Indianapolis, and did, in the railway cars above mentioned, make statements to your orator as follows: That they and their co-conspirators could continue to act under their conspiracy just as long as your orator could continue to resist it, and longer, and could act successfully under it at any place they pleased to choose, and would always be able to corrupt officers, both state and of the United States, to connive at and assist them in their said conspiracy, and that your orator would never be permitted by them to, and would never be able to, lodge with the proper authorities an effectual complaint, or to obtain any protection or redress at the hands of the law, or procure the unlawful punishment of the said conspirators. And the said Kinney and Splan further stated that they, together with the said David M. Ketcham, Ralph M. Ketcham and other co-conspirators of the conspiracy aforesaid had procured, in furtherance thereof, and of said kidnapping, the assistance and connivance of Edward Daniels, who was the Master in Chancery of the District Court of the United States for the District of Indiana, and of Robert Metzger, who was chief of police of the city of Indianapolis, and the said Kinney, Splan, Ketcham and Ketcham did at the same time call attention to facts which strongly corroborated their statements in the said particular, and furthermore did, with the intent to deceive your orator, and to prevent him from making
33 complaints to the proper authorities, falsely state to him that they had procured the connivance and assistance of the governor of Indiana, the judge of the probate court of Marion county therein, and the mayor of the city of Indianapolis in the said county and state. That at the time these statements were made they had the appearanc of truth, and your orator was justified in believing them under the circumstances, and was for a long time thereafter prevented by the acts of the conspirators from acquiring any further information on the subject.

31. That subsequent to the pretended inquisition described in paragraph 4, and pursuant to the adjudication and order thereat made, the defendants Burr, Mason, and other officers and employees of the said Oak Grove did hold and imprison your orator, and make many threats that they would imprison him perpetually, and that in case he should escape, that they would follow him to any part of the earth for the purpose of recapture, and did make ma-y other threats.

32. That during the said imprisonment your orator did prepare his proper appeal and petition for a writ of habeas corpus addressed to the circuit court of the aforesaid county of Genesee, for the purpose of testing the jurisdiction of the Courts of the said county in his case, and did deliver his said appeal and petition to the said Burr, who took and retained and still retains them. That subsequently your orator prepared and endeavored to forward other petitions of

he same nature addressed to the same court, and to the United States courts for the district of Michigan, and did address and endeavor to forward to the United States District Attorney for that ocality his request for the protection of law at the hands of that official. That after your orator had escaped from Oak Grove as hereinafter described, and on or about the 7th day of October, 1907, while your orator was in the City of Montreal, Province of Quebec and Dominion of Canada, your orator did endeavor, through an attorney resident in the State of Michigan, to lay his case before this court, and that at each of the times named in this para-
34 graph, and at all times after your orator was brought to Flint as above described, the said Burr has obstructed and prevented your orator from laying his case before the courts, and from procuring a vacation of the adjudication described in paragraph 4, or protection or redress at the hands of the law in any form whatever.

33. That the defendants Burr, Mason, Frackelton, Buckham, McGregor and Carton, above named, together with their co-conspirators above named, Herbert H. Hills, Charles B. Macartney, Ralph M. Ketcham, David M. Ketcham, William A. Ketcham, Eleanor Ketcham, John L. Ketcham, Jeremiah E. Kinney, Timothy Splan, William G. Stearn, George Donohoe, Goodrich H. Snow, Charles W. Hack, Jay F. Lyon, Franklin J. Tyrrell, Josiah Barfield, Archibald Church, William H. Drapier, Jr., J. H. Schumacher, W. T. Durham, J. W. Sherman, Will H. Hammersley, J. C. Reynolds, W. H. Macdonald, John J. Halpin, Gustave Kusterman, Allan D. Conover, A. B. Dresser, Harvey Clark, Edward F. Hodges, John Ray Newcomb, Edward B. Lane, Oakwood Retreat Association, Oak Grove, Pinkerton's National Detective Agency, National Surety Company, Chief of Police of the city of Chicago, and other persons, firms and corporations and officers and employees thereof, all joined the said conspiracy, committed the acts above described pursuant thereto, feloniously contrary to the laws of the United States and of the several states in which they committed their acts, with the designs described in paragraph 12, and with further design to imprison your orator for his life, to extort money from him, to conceal their crimes and escape punishment by corrupting officers of the law, procuring fraudulent adjudications against him, and otherwise obstructing and impeding him from gaining protection and redress at law.

34. That many other persons joined the said conspiracy, and committed many other crimes pursuant thereto, and your
35 orator omits *omits* to give a more particular account of such persons and crimes and of the false statements made and sworn to by J. C. Reynolds and W. H. Macdonald, co-conspirators above named, in their report to Jay F. Lyon, as described in paragraph 18, and of the false statements made and false testimony given by George Donohoe and J. C. Reynolds, as above described in paragraph 22, of the false statements made and false testimony given by William G. Stearns, Edward F. Hodges, John Ray Newcombe, David M. Ketcham, Ralph M. Ketcham, and John

L. Ketcham, as described in paragraphs 27 and 28, foregoing, and your orator makes the above omission for the reason that all the above acts and statements were made and done in pursuance of the said common conspiracy and design described in paragraph 12, and were a part thereof, and for that reason their relation in detail is more a matter of evidence than of allegation, and for the further reason that *that* said acts and statements were very numerous, and to give a full account of them all, together with the attendant circumstances, would lead to a great and inconvenient prolixity in this bill.

35. That the said conspiracy described in paragraph 12, together with the outrages and crimes committed pursuant thereto, as hereinbefore described, were well known in the communities wherein they occurred, and the said communities and the officers of the law thereof wilfully failed and neglected to use the means provided by law to ferret out the offenders and bring them to justice, and in the said communities no officer of the law made any effort whatever to do his lawful duty, and no person made any effort to secure, or render your orator any assistance in securing, to your orator the enforcement or protection of law.

36. That at the time the said conspirators joined themselves to the said conspiracy, as described in paragraph 12, they intended to continue their said acts, and the imprisonment of your orator throughout his life, and their threats, intimadation, injury and oppression in the free exercise of his constitutional rights,
36 and other crimes thereunder, and pursuant to their said intention, have continued and do now continue their said designs and acts and conspiracy.

37. That by reason of all the facts stated in the foregoing, and of the threats made by the said conspirators, that they could and would continue their crimes, it became apparent to your orator and your orator was justified in believing, and did and does now believe, that the said conspirators could and would commit any crime of violence and any crime against justice, at their convenience, with impunity, and secure the criminal connivance of the officers of the law, executive, police and judicial, in their said conspiracy, in the said communities of Wisconsin, Illinois, Michigan and Indiana, and in an indefinite number of other states.

38. That by reason of all the foregoing your orator was constrained to the following course to circumvent the said conspiracy and present his petition for redress in this court, which is the proper tribunal therefor: On the night of October 22, 1906, he escaped by force from the said Oak Grove, and placed himself under the protection of the flag and jurisdiction of England and the British Empire; that subsequently, as soon as it was physically possible after apprehension of immediate arrest had been allayed, he returned to the United States in February, 1908, and after due consideration, and in the face of various obstacles to such a course, selected a community of repute for enforcement of law and protection of its inhabitants, where it was possible for him to maintain himself and

prepare and present this his bill in due and lawful form, together with the evidence necessary to support it.

39. That the course described in the paragraph next foregoing was proper and necessary, and your orator has been in no wise negligent and in all things diligent in bringing this his bill; that the delay and lapse of time before this bill was brought was due
37 wholly to the acts of the defendants and conspirators, as the above acts are described in the foregoing, and consist of delays natural and incident to such a course as described in paragraph 38, due to the physical difficulties thereof, and delays the direct result of the acts of the said defendants and conspirators, which said acts last named were committed for the purpose of impairing the health, reputation and earning power of your orator, of obstructing him in gathering evidence and in obtaining access to the courts, and in other manner impeding and delaying him.

40. That the defendants have suffered no prejudice whatever by reason of the delay and lapse of time before this bill was brought, and the said delay has not and does not in any way affect their equitable or legal rights in this action.

That the defendants and their co-conspirators sometimes allege and pretend that your orator did, in the county court of the said Walworth county, on March 20, 1906, through Franklin J. Tyrrell, co-conspirator above named, as his attorney, petition to the said Lyon for a re-adjudication of his status and sanity, and that the said Lyon did thereupon re-adjudicate the said status; that by the law of the state of Wisconsin such a re-adjudication is a part of the same action as the original adjudication, and that your orator, by his act in petitioning for such a re-adjudication, has pleaded to the merits of the said proceeding at law, and thereby has estopped himself to deny jurisdiction on the part of the said Lyon of the subject-matter thereof, the said status. Whereas the contrary is true and there is no estoppel, for the reason that by the law of Wisconsin the status of one found insane can only be re-adjudicated after it has been first adjudicated; that for the reasons stated in paragraph 20, the said Lyon could not and did not adjudicate the status of your orator, and therefore did not and could not entertain any plea to the merits of the case in an action to re-adjudicate which
38 he did not and could not hold and consider: that there is no estoppel for the further reason that, as hereinbefore stated, in the absence of conduct on the part of your orator which justified the officials of Wisconsin in assuming authority over him in the proper exercise of the police powers of that said state, the status of your orator, whether sane or insane, is extra-territorial to Wisconsin, and your orator cannot enlarge the powers of Wisconsin either by estoppel or express waiver; that on the face of the record of the adjudication the fact of want of jurisdiction is made plain by the recitements of jurisdictional facts, as above stated in paragraph 20, and on the face of the record of the alleged re-adjudication, the fact of want of jurisdiction of the subject-matter thereof is similarly made plain by the fact that the said record of re-adjudication recites that your orator is and then was a citizen of Indiana and further

makes recitements as to the conduct of your orator while he was in Wisconsin which are of precisely the same legal effect as the recitements on the same subject in the record of the first adjudication as described in paragraph 20, and for that reason negative and disclaim any jurisdiction over the status of your orator on either ground, viz., that the said re-adjudication is made of the status of a resident of Wisconsin, or is made of the status of a non-resident in the proper exercise of the police powers of the said state; that there was no jurisdiction, and therefore no lawful action by the court, and no plea and no estoppel, and the said acts were a crime and no more, and your orator never consented thereto. That there is no estoppel for the further reason that the said Tyrrell was at all times throughout the course of the said adjudication, re-adjudication and acts incident thereto, employed by the party adverse to your orator as their attorney, and was at no time employed by your orator as his attorney, and your orator did not authorize the said Tyrrell to plead to the merits of the said proceeding in behalf
39 of your orator as his attorney, and the said Tyrrell made his said plea in the capacity of attorney for your orator without the knowledge of your orator, and for the purpose of making it appear on the records of the said county court that your orator had pleaded to the merits of the case, and was thereby estopped to deny the jurisdiction of the court; that such a proceeding on the part of the said Tyrrell is contrary to equity and cannot work an equitable estoppel against your orator.

That the defendants and their co-conspirators sometimes allege and pretend that the defendant Burr discharged your orator from the said Oak Grove, and thereby nullified all restriction of law on his liberty, whereas the contrary is true, and the said Burr did not discharge your orator, but your orator broke through the window grating of the said Oak Grove with an iron bar and escaped to Great Britain as above stated. And the said Burr did no more than falsely to allege a long time thereafter that he had discharged your orator, and neither the said Burr nor any of the other defendants and conspirators above named took any steps to vacate or to procure a vacation or nullification of the pretended adjudication of insanity described in paragraph 4, and none of the said defendants and conspirators in any way effected or attempted any act looking to the removal of the legal restrictions on the liberty of your orator which they, by their acts above described, had caused to be placed thereon, and none of the said defendants and conspirators acted in any way to put an end to the conspiracy herein described.

That to support other proofs which your orator holds of his statements made in this bill, your orator relies on confessions and admission- as follows:—Of the witnesses as enumerated in paragraph 22 of the stating part of this bill, at the pretended hearing described in paragraph 20, to support and prove the statements in 13, 14 and 19, respectively; Of the witnesses enumerated in paragraphs
40 27 and 28, at the pretended hearing described in paragraph 4 to support the statements made in paragraphs 6, 11, 23, 24, 25 and 26 respectively; Of the said Oscar A. King to support the

statement made with regard to himself in paragraph 23, and the said King made the said admission in the course of his testimony on the 21st day of March, 1906, in the hearing of the petition for a re-adjudication of the sanity and status of your orator, and as a witness thereat, and in the said county court of the county of Walworth and state of Wisconsin; and all of the said confessions and admissions are to be found in the official transcripts of the testimony of the said pretended proceedings at law, respectively as described herein, on the admissions made by the National Surety Company, William H. Drapier, Jr., Archibald Church and Josiah Barfield on the face of the bond described in paragraph 17 to support the statements made in regard to the said Drapier, Church, Barfield and Surety Company in paragraph 17; On a letter sent by M. J. Tappins, Secretary of the above named Board of Control, to the said Jay F. Lyon, on August 1, 1905, and filed with the record of the pretended hearing described in paragraph 20 to support the statements made in paragraph 21; On the statement made by the said J. H. Schumacher in person to support the statement made *by the said J. H. Schumacher in person to support the statement made* in paragraph 24 with regard to the said Schumacher and Pinkerton's National Detective Agency; On a letter written by the said Tyrrell to John L. Ketcham, above named, on or about the 15th day of March, 1906, at Lake Geneva, Wisconsin, to support the statements made in the first paragraph of the charging part of this bill with regard to the fact that the said Tyrrell was the attorney of the party adverse to your orator and not the attorney of your orator.

To the end therefore, that the said defendants may, if they can, show why your orator should not have the relief hereby prayed, and to the end that the defendants may full answer make to all and singular of the premises as fully and completely as if the same were repeated and they specially interrogated thereto, and that more especially the said defendants may, upon their several and respective oaths, and according to the best and utmost of their several and respective knowledge, remembrance, information and belief, full, true, direct and perfect answer make to such of the several interrogatories hereinafter numbered and set forth as by the note hereunder written they are respectively required to answer, that is to say:

41

(1) Whether it is not a fact that in the course of a pretended inquisition into the sanity of your orator, John L. Ketcham, Jr., held in the Probate Court of Genesee County, Michigan, on or about May 18 and 19, 1906, there were not placed in the hands of John J. Carton, defendant herein, certain letters papers, writings and documents, the lawful property of your orator in this bill, in furtherance of the said pretended inquisition, and for use as exhibits thereat, and for other purposes incidental to the said pretended inquisition, and what disposition the said Carton made of the said letters, papers, writings and documents, and what is his best knowledge as to their present location?

(2) Whether it is not a fact, that in the course of the inquisition and at the time, and in the manner, and for the purposes, described

in Interrogatory I, herein, there were not placed in the hands of David S. Frackelton, letters, papers, writings and documents, the lawful property of your orator, and what disposition the said Frackelton made of them, and what is his best knowledge as to their present location?

(3) Whether it is not a fact that in the course of *the* their official duties of filing, maintaining and keeping the records of the inquisition described in Interrogatory I herein, certain writings, letters, documents and papers other than and in addition to the documents which under the laws of Michigan constitute the record of the said inquisition and are made by the officials of the said states
42 have come into the possession of the defendants John C. Graves, Trent Bowles and Colonel O. Swayze, and what disposition have the said Graves, Bowles and Swayze made of them, and what is the present knowledge of the said defendants concerning the present location of the said documents, writings, letters and papers?

Your orator therefore prays as follows:

(1) That the said defendants may be decreed and compelled to render a full and perfect account of all the writings, letters, documents and papers, which were placed in the hands of any of them by their defendants and their co-conspirators hereinbefore described, in connection with the pretended inquisition described in paragraph 4 of the stating part of this bill, and to restore to your orator such of the said writings, letters, documents as it shall, upon hearing, appear now are in their possession or in their power to restore.

(2) That the defendant Colonel O. Swayze may be decreed and compelled, in the exercise of his office as Judge of the Probate Court of Genesee County, State of Michigan, to set aside, vacate, hold for nought and declare null and void on the records of the said Probate Court the pretended inquisition in insanity directed against your orator, and held in the said Probate Court on or about the 18th and 19th days of May, 1906, together with all orders, findings, reports and adjudications, pertaining thereto, and that the defendant Trent Bowles be decreed and compelled to make on the records of the said Probate Court the proper and lawful entries in accordance with such action on the part of the defendant Colonel O. Swayze.

And to the end that your orator may obtain the relief to which he is justly entitled in the premises, he now prays the Court to grant him process by subpœna directed to the said Colonel Bell Burr, David S. Frackelton, James E. McGregor, James N. Buckham, Howard Mason, John J. Carton, Colonel O. Swayze, Judge of the Probate Court of the County of Genesee and State of Michigan, Trent Bowles,
43 Register of the said Probate Court, and Oak Grove, a corporation of the state of Michigan, defendants herein named, requiring and commanding each of them to appear herein and answer under oath to such of the several interrogatories in the bill numbered and set forth as by the note hereunder written they are respectively required to answer, and the said due process by subpœna also requiring and commanding each of the said defendants to appear herein and answer but not under oath, the same being expressly waived, the

several allegations in this your orator's bill contained, other than those in the said interrogatories.

And your orator further prays for such other and further relief as may be just and equitable.

JOHN L. KETCHAM, JR.,
Attorney per se.

DELL H. THOMPSON,
Resident Counsel.

Shearer Block, Bay City, Mich.

NOTE.—The defendant John J. Carton is required to answer the Interrogatory numbered 1. The defendant David S. Frackelton is required to answer the Interrogatory numbered 2, and the defendants John C. Graves, Trent Bowles and Colonel O. Swayze are required to answer the Interrogatory numbered 3.

Filed May 11, 1912. Elmer W. Voorheis, Clerk, by Isabel A. Ballou, Deputy Clerk.

44 *Amendment to Bill of Complaint.*

In the District Court of the United States in and for the Northern Division, Eastern District of Michigan.

In Equity.

JOHN L. KETCHAM, JR.,

vs.

COLONEL BELL BURR, DAVID S. FRACKELTON, JAMES C. MCGREGOR, Howard Mason, John C. Graves, John J. Carton, Colonel O. Swayze, Judge of the Probate Court, County of Genesee, State of Michigan; Trent Bowles, Register of the Probate Court, County of Genesee, State of Michigan; Oak Grove, a Corporation of the State of Michigan.

To the Clerk of said Court:

The complainant in the above cause hereby amends his petition in the following particulars, and as in a small matter under Rule 28 of the Rules of Practice for the Courts of Equity of the United States, as adopted by the Supreme Court of the United States, January 7, 1884.

Amendment I. By reason of the fact that the name of the defendant McGregor is given in the said petition as James E. McGregor, and it now appears that his name is James C. McGregor, and of the fact that the said McGregor has accepted service of the process in the above cause, and has entered no appearance therein or denial that he is the person intended to be named in the said bill, the name James E. McGregor is amended to read James C. McGregor wherever it occurs in the said bill.

Amendment II. By reason of the fact that the defendant James N. Buckham is now dead, that no direct relief is asked against him in the said bill, and that his presence or absence as a party defendant in the above cause in no wise affects *that* validity of the decree therein prayed, or the defenses of the other parties defendant, the petition in the above is accordingly amended as follows:

The name of the said Buckham is omitted from the title, the introductory paragraph and the prayer for subpœna of the said bill, and the premises of the bill are amended respectively by paragraph as numbered below,

Par. 1. The words "that the defendants James N. Buckham and James E. McGregor are physicians" are amended to read "that James N. Buckham, who is now deceased, was a physician, a citizen of the State of Michigan and a resident of the County of Genesee therein, and the defendant James C. McGregor is now a physician."

Par. 4. The words "appoint the defendants James N. Buckham and James E. McGregor as examining physicians" are amended to read "appoint the said James N. Buckham and the Defendant James C. McGregor as examining Physicians."

Par. 6. The fifth word in the paragraph, to-wit the word "defendant" is omitted, and therefore the words "defendants Burr, Mason, Frackelton, Buckham," etc. are amended to read, "the said Burr, Mason, Frackelton, Buckham," etc., wherever the said word occur in this paragraph.

Pars. 9 and 12. The fourth word respectively in each of said paragraphs, to-wit, the word "defendants," is omitted.

Par. 33. The third word of the said paragraph, to-wit the word "defendant," is omitted, and the word "said" is substituted therefor.

JOHN S. KETCHAM, JR.,
Attorney per se.

DELL H. THOMPSON,
Resident Counsel.

Filed August 6, 1912. Elmer W. Voorheis, Clerk, by Isabel A. Ballou, Deputy Clerk.

46 *Answer.*

UNITED STATES OF AMERICA:

In the District Court of the United States for the Eastern District of Michigan, Southern Division.

In Equity.

JOHN L. KETCHUM, JR.,

vs.

COLONEL BELL BURR, DAVID S. FRACKELTON, JAMES C. MCGREGOR, James N. Buckham, Howard Mason, John C. Graves, John J. Carton, Colonel O. Swayze, Judge of the Probate Court, County of Genesee, State of Michigan; Trent Bowles, Register of the Probate Court, County of Genesee, State of Michigan; Oak Grove, a Corporation of the State of Michigan.

The Joint and several answer of the defendants Colonel Bell Burr, David S. Frackelton, John J. Garton, Colonel O. Swayze, Judge of the Probate Court, County of Genesee, State of Michigan, Trent Bowles, Register of the Probate Court, County of Genesee, State of Michigan, and Oak Grove, a corporation of the State of Michigan, to the bill of complaint filed in the above entitled cause, or to so much and such parts thereof as they are advised it is material or necessary to make answer unto, answering say

1. In answer to paragraph 1 they admit the allegations therein contained, except that the defendant James N. Buckham is now living in the City of Flint, the said James N. Buckham being now deceased, and also except the statement therein contained as to the Act under which the defendant Oak Grove is incorporated,
47 and aver that it is not incorporated under the act therein stated.

2. In answer to paragraph 2, they admit the statements therein contained, except the statement that the interests of Herbert H. Hills and Charles B. Macartney are identical with those of the defendant Colonel Bell Burr. This they deny.

3. In answer to paragraph 3, they admit that there are nurses, attendants and other employees at Oak Grove, but deny there are any so called guards, and they also admit that the interests of said attendants and employees are, in a measure, not diverse from the interests of the defendant Howard Mason.

4. In answer to paragraph 4 these defendants admit that on or about the 4th day of May, 1906, in the City of Flint, Michigan, the defendant Colonel Bell Burr filed a petition in the Probate Court of the County of Genesee, and State of Michigan, praying for an injunction on the sanity of said complainant; that thereupon an order of hearing was made by David S. Frackelton, then Judge of Probate of said county, and the said Judge of Probate also did appoint James N.

Buckham and James C. McGregor, practicing physicians of the City of Flint, in good and regular standing, to make an examination of the complainant for the purpose of advising the Court as to his sanity; that thereafter, to wit, on May 18 and 19, 1906, a hearing was had upon said petition and witnesses were examined. That upon said hearing said James N. Buckham and James C. McGregor were witnesses. The complainant was represented by Clinton Roberts, an attorney at law, as counsel, and took part himself in the conduct of the examination and the cross-examination of the witnesses, and that after said hearing was had said David S. Frackelton did adjudicate said complainant insane and commit him to Oak Grove for treatment.

They aver that all of the proceedings from the filing of the
48 petition to the com-itment for treatment were regular and valid, and in accordance with the laws of the State of Michigan, and all were for the benefit of said complainant.

5. In answer to paragraph 5, they aver that all of the acts specified in the preceding paragraph were valid and in accordance with the laws of the State of Michigan.

6. In answer to paragraph 6 they deny that any of the acts specified in paragraph 4 of this answer were committed fraudulently or feloniously or contrary to the laws of the State of Michigan or of the United States, and they also deny that their acts in said matter were or are null and void. They further say that they have no personal knowledge of what occurred prior to the arrival of the complainant in the City of Flint, and they therefore neither admit nor deny the allegations contained in said paragraph as to these occurrences. They admit, however, that on May 3, 1906, the complainant was brought to Oak Grove for medical care and treatment. They deny that he was brought there as a result of any conspiracy or that they took part in any conspiracy of any kind or nature. They also deny that the complainant was at any time imprisoned in Oak Grove, or that there was any intention of imprisoning him there, but on the contrary that there was a desire on the part of his family and friends that he should remain there for a time and receive medical care and treatment, and that was the only purpose in instituting the proceedings hereinbefore described.

7. In answer to paragraph 7 they deny that their acts are null and void and again aver that whatever they did in the matter of said hearing was done under the laws of the State of Michigan and is binding and valid on the complainant.

49 8. In answer to paragraph 8 these defendants deny that there was any fraud committed and they aver that the hearing had in Probate Court for the County of Genesee, for the purpose of determining the mental condition of the complainant was a valid hearing and that the said Probate Court had jurisdiction, and the order and determination made by it were valid and binding.

9. In answer to paragraph 9 these defendants deny that the defendants Frackelton, Buckham and McGregor in any manner acted unlawfully, but that everything which they or any of them did was lawful and in accordance with the laws of the State of Michigan. They admit that the order of determination was entered in the

records of the Probate Court of the County of Genesee by order of the defendant, David S. Frackelton. They admit that the defendant Trent Bowles is the present Register of the Probate Court for said County of Genesee, and the defendant Colonel O. Swayze is the present Judge of said Court, and that all of their acts and doings with reference to complainant are under and in pursuance of the laws of the State of Michigan.

10. In answer to paragraph 10 these defendants admit that all of the records and judgment of the Probate Court of the County of Genesee are in due and lawful form and are entitled to full faith and credit. They deny that they were brought about by any act of confederation of any nature, or that they deprived the complainant of any rights or privileges to which he is entitled under the laws of the State of Michigan or of the United States, and they deny that there were any threats, intimidation, injury, oppression or conspiracy in any manner connected with the hearing as to the mental condition of said complainant, as hereinbefore set forth.

50 11. In answer to paragraph 11 they admit that at the hearing there were certain writings and documents exhibited, which were said by those who exhibited them in the first instance to have been prepared by the complainant. These defendants have no personal knowledge of that fact, however. They do admit that certain of said writings and documents were delivered to the defendant John J. Carton, for the purpose of being used at said hearing, and were so used. That said writings and documents, so far as these defendants are concerned, were not procured as the result of any conspiracy or fraud, but the same were delivered to the said Carton for the purpose hereinbefore stated, and all or a part of said writings are now in the possession of the defendant Oak Grove, as a part of its medical records.

12. In answer to paragraph 12 they deny that they have been guilty of any conspiracy as alleged therein, or that they have committed any crime or offense against the laws of the State of Michigan or the laws of the United States, and aver that all of their acts and doings in the matter have been legal and valid.

13. In answer to paragraphs 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29 and 30, these defendants admit that William G. Stearns and Edward F. Hodges were witnesses at the hearing had on the mental condition of the complainant in the Probate Court for the County of Genesee. They are also advised and believe that the National Surety Company is a bonding company which furnishes bonds to various persons, and that there was a hearing in Walworth County, Wisconsin, to inquire into the mental condition of said complainant prior to the hearing at

51 Flint. As to all of the other allegations in these paragraphs they have no personal knowledge, and having no personal knowledge, can neither admit nor deny the things therein stated, and they therefore leave complainant to make such proof of the same as he may be advised or shall be permitted by the Court.

14. In answer to paragraph 31 these defendants admit that after the complainant was adjudged insane by the Probate Court for the

County of Genesee, that he was taken to Oak Grove for treatment and medical care and there detained, under and in pursuance of the order of said Court. The defendants Colonel Bell Burr and Oak Grove deny that any threats were made to imprison him permanently or any threats of any other kind or nature, and aver that he was treated kindly and considerately, and given such medical care and attention as in the opinion of the medical staff was deemed necessary.

15. In answer to paragraph 32 the defendants David S. Frackelton, John J. Carton, Colonel O. Swayze, Judge of the Probate Court, County of Genesee, State of Michigan, and Trent Bowles, Register of the Probate Court, County of Genesee, State of Michigan, say that they have no personal knowledge of the things therein alleged, and having no personal knowledege, can neither admit nor deny the same. The defendants Colonel Bell Burr and Oak Grove, in answer to said paragraph admit that some preparation was made by the complainant to take an appeal, but that the same was discouraged. They deny that there is any such petition in the possession of Oak Grove or Colonel Bell Burr, and if there is such a petition in existence they do not know where it is. They further answer that they have no personal knowledge of the other allegations in said paragraph and therefore can neither admit nor deny the same, and leave complainant to his proof.

52 16. In answer to paragraph 33 they deny any conspiracy, so far as they are concerned, or any illegal act or any design to imprison the complainant for life or for any period, or to extort any money from him or procure any fraudulent adjudication against him.

17. In answer to paragraph 34 they neither admit nor deny the allegations therein contained, not having any personal knowledge of the same, and leave complainant to his proofs.

18. In answer to paragraph 35 they admit that the hearing in the Probate Court of the County of Genesee was a public hearing, to which the public were admitted, but how well the community knew of it they do not know. They have no personal knowledge of any of the other things charged in said paragraph and leave complainant to his proofs.

19. In answer to paragraphs 36 and 37 they deny the allegations contained therein, so far as they have any personal knowledge of the same.

20. In answer to paragraph 38 the defendants Colonel Bell Burr and Oak Grove admit that sometime after he was committed to Oak Grove for treatment he left and has not since returned. Aside from that these defendants have no personal knowledge of the matters alleged therein and having no personal knowledge, can neither admit nor deny the same, and leave complainant to his proofs.

21. In answer to paragraph 39 these defendants deny that in view of the action taken with reference to complainant they are in anywise conspirators. They deny that whatever they did was done for the purpose of impairing either the health, reputation or earning power of the complainant or of obstructing him in gathering

evidence or in obtaining access to the courts, or for the pur-
53 pose of impeding or delaying him, but on the contrary they aver that what was done, was done to improve his health and mental condition and for no other purpose.

22. In answer to paragraph 40 these defendants admit that they have taken no action to vacate or procure a vacation *of* nullification of the adjudication of insanity of complainant in the Probate Court of the County of Genesee, and the said adjudication now remains in full force and effect. The defendant Colonel Bell Burr admits that he has reported that said complainant was "discharged" from Oak Grove. These defendants neither admit nor deny the balance of said paragraph, not caring to discuss the propositions therein contained.

23. The said defendant John J. Carton admits that on the hearing in the Probate Court for the County of Genesee there were certain writings and documents placed in his hands, which he was informed at that time were prepared by the complainant; that said writings and documents were exhibited in court at said hearing and it is his recollection that some or all of them were introduced in evidence; that after said hearing had concluded, these writings and documents were delivered to some of the authorities at Oak Grove, and as he is advised and believes, they are now a part of the medical records of said Oak Grove. The defendant David S. Frackelton admits that there were certain writings and documents exhibited at the hearing heretofore referred to in this paragraph, which he believes to be the same writings and documents heretofore referred to in this paragraph by the defendant John J. Carton, but
54 that he has no recollection of what disposal was made of them after the hearing and has no personal knowledge of their present location. The defendants Trent Bowles, Register of the Probate Court, County of Genesee, and Colonel O. Swayze, Judge of the said Court, say that neither of them were present at the hearing above referred to and have no personal knowledge of what disposal was made of said writings and documents, or of their present location.

These defendants deny that the complainant is entitled to the relief prayed for in his bill of complaint or to any relief whatever, and they pray that said bill of complaint be dismissed with costs.

DAVID S. FRACKELTON.
COLONEL O. SWAYZE.
TRENT BOWLES.
JOHN J. CARTON.
COLONEL BELL BURR.

[Corporation Seal, Oak Grove.]

OAK GROVE, *a Corporation,*
By C. B. BURR, *Secretary.*

STATE OF MICHIGAN,
County of Genesee, ss:

On this 12th day of July, A. D. 1912, personally appeared before me, a Notary Public in and for said county, David S. Frackelton, who being duly sworn, says that he has read the foregoing answer by him subscribed, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated to be upon information and belief, and as to those matters he believes it to be true.

F. H. HITCHCOCK,
Notary Public, Genesee County, Michigan.

My commission expires Jan'y 12, 1916.

55 STATE OF MICHIGAN,
County of Genesee, ss:

On this 13th day of July, A. D., 1912, personally appeared before me, a Notary Public in and for said county, Colonel Bell Burr, John J. Carton, Colonel O. Swayze and Trent Bowles, who being duly sworn, say that they have read the foregoing answer by them subscribed, and know the contents thereof, and that the same is true of their own knowledge, except as to the matters therein stated to be upon information and belief, and as to those matters they believe it to be true.

DELLA G. SMITH,
Notary Public, Genesee County, Michigan.

My commission expires July 12, 1913.

STATE OF MICHIGAN,
County of Genesee, ss:

On this 13th day of July, A. D. 1912, before me, the undersigned, a Notary Public in and for said county, personally came Colonel Bell Burr and made oath that he is secretary of Oak Grove, a corporation, one of the defendants in the foregoing entitled cause, and is duly authorized to sign and verify this answer in its behalf; that he signed the corporate name of said Oak Grove to the said answer and affixed its corporate seal for and on behalf of said defendant, Oak Grove, and he made oath to this answer for and on behalf of said defendant, and that he has read the said answer and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters which are therein stated to be on information and belief, and as to those matters he believes it to be true.

DELLA G. SMITH,
Notary Public, Genesee County, Michigan.

My commission expires July 12, 1913.

(Filed July 16, 1912. Elmer W. Voorheis, Clerk, by Isabel A. Ballou, Deputy Clerk.)

56 *Decree Dismissing Bill.*

At a session of the District Court of the United States for the Eastern District of Michigan, Northern Division, continued and held pursuant to adjournment at the District Court Room in the City of Bay City in said District on Saturday, the Eighteenth day of October in the year of our Lord, one thousand nine hundred and thirteen.

Present: The Honorable Arthur J. Tuttle, District Judge.

JOHN L. KETCHAM, Jr., Complainant,

vs.

COLONEL BELL BURR, DAVID S. FRACKELTON, JAMES E. MCGREGOR, James N. Buckham, Howard Mason, John C. Graves, John J. Carton, Colonel O. Swayze, Judge of the Probate Court, County of Genesee, State of Michigan; Trent Bowles, Register of the Probate Court, County of Genesee, State of Michigan; Oak Grove, a Corporation of the State of Michigan, Defendants.

This cause having been placed upon the October Term Docket of this Court pursuant to Rule 56 of the Rules of Practice of the Courts of Equity of the United States promulgated by the Supreme Court of the United States on the Fourth day of November, 1912, and having been duly noticed and coming on for hearing on the Sixteenth day of October on Bill of Complaint, Answer and Replication, was argued by Counsel and submitted, and now after due consideration thereof, it is ordered, adjudged, and decreed that said Bill of Complaint be and the same is hereby dismissed.

57 *Assignment of Errors.*

In the District Court of the United States in and for the Northern Division, Eastern District of Michigan.

In Equity.

JOHN L. KETCHAM, Jr.,

vs.

COLONEL BELL BURR et al.

Now comes John L. Ketcham, Jr., the petitioner-appellant, and files assignment of errors, and says that in the records and proceedings in the above entitled cause there is manifest error in this, to-wit:

In holding that under the allegations in the bill the Court had no jurisdiction to give equitable relief.

In holding that the Probate Court of Genesee County, Michigan,

had jurisdiction of the subject matter of the adjudication complained of in the bill.

In holding that the said Probate Court, in making its said adjudication, acted within the due process of law.

In holding that the said adjudication of the Probate Court was not fraudulent, void and unconstitutional, but valid and legal.

In holding that the said adjudication of the Probate Court does not now deprive him of his liberty contrary to the Fourteenth Amendment.

In holding that the complainant was not and is not deprived of his property, to-wit, his papers and documents, by acts on the part of the defendant- which, though done under color of the
58 laws of Michigan, were without due process of law, unlawful and contrary to the Fourteenth Amendment.

In holding that the papers and documents for whose accounting and return the complainant prayed, were not of sufficient value to constitute a proper matter for the cognizance of the Court.

In holding that the petition, in showing a deprivation on the part of the defendants of his civil rights, did not show proper subject matter for equitable cognizance on the part of the Court.

In holding that the evidence presented by the complainant in the District Court was not sufficient to prove so much of his bill as was put in issue by the defendants' answer.

In holding that the complainant had lost his right to relief through his own laches.

In holding that the adjudication of the Probate Court complained of in the bill was entitled to the protection of the statute against stays by injunction of proceedings in State courts.

In refusing to grant the first special prayer in the bill, and decree an accounting and restoration to the complainant of the papers and documents taken from him as alleged in the bill.

In refusing to grant the second special prayer in the bill, and decree and compel the defendants Colonel O. Swayze, Judge of the said Probate Court, and Trent Bowles, Register of the said Court, to set aside and vacate the said adjudication of the Probate Court, and make the proper and lawful entries incident thereto, upon the
59 records of the Probate Court.

In refusing in addition to the refusal of the above relief specially prayed, the relief under the general prayer for relief in the bill to which the complainant was clearly entitled by the pleadings and proofs presented at the hearing, that is to say:

First, a decree that the acts and adjudication of the Probate Court of Genesee County, Michigan, which the bill complained of, were in law null and void, fraudulent and unlawful, and contrary to the Constitution,

Second, an injunction prohibiting the defendants Burr, Frackelton, McGregor, Mason, Graves, Carton and Oak Grove, or any of them, from taking any action under, using or deriving any advant-

age from the said acts and adjudication of the Probate Court so adjudged and decree- null and void.

In Dismissing the bill.

RENWICK F. H. MACDONALD,
DELL H. THOMPSON,
Attorneys for Appellant.

Filed Sept. 17, 1915. Elmer W. Voorheis Clerk; Isabel A. Ballou, Deputy Clerk.

60 *Petition for Appeal.*

In the District Court of the United States in and for the Northern Division, Eastern District of Michigan.

In Equity.

JOHN L. KETCHAM, JR.,

vs.

COLONEL BELL BURR et al.

The Petition of John L. Ketcham, Jr., Petitioner-Appellant, for Allowance of an Appeal to the Supreme Court of the United States.

To the Judge of the District Court of the United States in and for the Norther- Division, Eastern District of Michigan:

Your petitioner, complainant in the above entitled cause, would respectfully represent and show that in the above entitled cause pending in the District Court of the United States in and for the Northern Division, Eastern District of Michigan, there was entered at the October Term, 1913, a final decree greatly to the prejudice and injury of your petitioner, which said decree is erroneous and inequitable in many particulars.

Wherefore, in order that your petitioner may obtain relief in the premises and have opportunity to show the errors complained — your petitioner prays that he may be allowed an appeal in said cause to the Supreme Court of the United States, and that the proper orders touching the security that is to be required of him be made.

RENWICK F. H. MACDONALD,
DELL H. THOMPSON,
Attorneys for Petitioner-Appellant.

Filed Sept. 17, 1915., Elmer W. Voorheis, Clerk, by Isabel A. Ballou, Deputy Clerk.

61 *Order Allowing Appeal.*

At a Session of the District Court of the United States for the Eastern District of Michigan, Northern Division, continued and held

pursuant to adjournment at the District Court Room in the City of Bay City in said District on Tuesday, the Twelfth day of October in the year of our Lord, one thousand nine hundred and fifteen.

Present: The Honorable Arthur J. Tuttle, District Judge.

JOHN L. KETCHAM, JR.,

vs.

COLONEL BELL BURR, DAVID S. FRACKELTON, JAMES E. McGREGOR, James N. Buckham, Howard Mason, John C. Graves, John J. Carton, Colonel O. Swayze, Judge of the Probate Court, County of Genesee, State of Michigan; Trent Bowles, Register of the Probate Court, County of Genesee, State of Michigan; Oak Grove, a Corporation of the State of Michigan.

In this cause on reading and filing assignments of error and petition for appeal heretofore made and entered herein to the Supreme Court of the United States

It is by the Court now here ordered that said petition for appeal be and the same is hereby granted and appeal allowed, and bond on appeal is hereby fixed at the sum of Two Hundred and Fifty ($250.00) Dollars, and it is also ordered by the Court that citation issue herein.

62 *Citation.*

In the Supreme Court of the United States.

JOHN L. KETCHAM, JR.,

vs.

COLONEL BELL BURR et al.

THE UNITED STATES OF AMERICA:

To Colonel Bell Burr, David S. Frackelton, James C. McGregor, John O. Graves, Howard Mason, John J. Carton, Colonel O. Swayze, Judge of the Probate Court, County of Genesee, State of Michigan, Trent Bowles, Register of the Probate Court, County of Genesee, State of Michigan, and Oak Grove, a corporation of the State of Michigan:

You and each of you are notified that in a certain case in Equity in the District Court of the United States in and for the Northern Division, Eastern District of Michigan, wherein John L. Ketcham, Jr., is complainant and Colonel Bell Burr, David S. Frackelton, James C. McGregor, Howard Mason, John C. Graves, John J. Carton, Colonel O. Swayze, Judge of the Probate Court, County of Genesee, State of Michigan, Trent Bowles, Register of the Probate Court, County of Genesee, State of Michigan and Oak Grove, a corporation of the State of Michigan, are defendants, an appeal has been allowed the complainant therein to the Supreme Court of the United States, and you are hereby cited and admonished to

63 be and appear in *in* said Court at Washington, D. C. the Tenth day of November, A. D., 1915, to show cause, if any there be, why the order and decree appealed from should not be corrected and why speedy justice should not be done the parties in that behalf.

Witness the Honorable Edward Douglass White, Chief Justice of the United States, this Twelfth day of October in the year of our Lord one thousand nine hundred and fifteen, and of the Independence of the United States, the one hundred and fortieth.

ARTHUR J. TUTTLE,
United States District Judge.

Due and timely service of the within citation is hereby accepted.
Oct. 14, 1915.

JOHN J. CARTON,
Attorney for Defendants.

Filed October 15, 1915. Elmer W. Voorheis, Clerk, by Isabel A. Ballou, Deputy.

64 *Appellant's Præcipe for Record on Appeal.*

In the District Court of the United States in and for the Northern Division, Eastern District of Michigan.

In Equity.

JOHN L. KETCHAM, JR.,

vs.

COLONEL BELL BURR et al.

The Præcipe of John L. Ketcham, Jr., Petitioner-Appellant, for Record on Appeal.

To the Clerk of said Court:

In the petitioner's appeal of the above entitled cause in equity to the Supreme Court of the United States, please incorporate into the transcript of the record on appeal the following papers:

The bill of complaint, the amendment thereto, the defendant's answer, Exhibit A, Exhibit B, the decree of the court, the petition for appeal and allowance thereof, the citation and acknowledgement of service thereof, and the assignment of errors.

DELL H. THOMPSON,
Attorney for Appellant.

Filed Nov. 23, 1915. Elmer W. Voorheis, Clerk, by Isabel A. Ballou, Deputy Clerk.

65 *Petition and Affidavits.*

In the District Court of the United States in and for the Northern Division, Eastern District of Michigan.

In Equity.

JOHN L. KETCHAM, JR., Complainant and Appellant,

vs.

COLONEL BELL BURR et al., Defendant- and Appellees.

To the Judge of the said Court:

The petition of John L. Ketcham, Jr., the complainant above named, respectfully showeth:

I. That the petitioner has taken an appeal to the Supreme Court of the United States, and the same has been allowed, from the judgment of this Court, dismissing the bill of complaint, entered on the 18th day of October, 1913, and he is now engaged in preparing the necessary papers on appeal.

II. That, as appears by the affidavit of the petitioner, hereto annexed, verified the 20th day of November, 1915, and the affidavit of Dell H. Thompson, hereto annexed, and verified the 22nd day of November, 1915, two certified copies of transcript, duly authenticated for introduction as evidence, were, upon the trial of the above entitled cause, handed to the Court by the counsel for this petitioner as evidence herein. That said certified transcripts were (1) a duly certified copy of the record of the proceedings for the adjudication of the complainant as a private insane person, filed with the Register of the Probate Court of the County of Genesee, State of Michigan,
66 same having been duly and properly certified under his hand and seal as being a true and authentic copy of the original record in his possession; and (2) a duly and properly certified copy of the testimony taken and proceedings had at the hearing on the petition in said proceedings, certified under the hand of the official stenographer of the said Probate Court as being a true and accurate transcript of the original shorthand notes in her possession of the testimony and proceedings at the said hearing. That said transcripts are adequately referred to and fully described in the bill of complaint in this cause. That the same was offered to the Court in evidence and no objection whatever was taken to their relevancy, competency or admissibility as such evidence and proof.

III. That the incorporation of these Exhibits as part of the record on appeal has been objected to by the counsel for the defendants on the ground that the same have not been marked as evidence in the case. That as appears from the annexed affidavits the same were offered in evidence, and so received by the Court.

It is respectfully prayed, that the Court direct that the above described transcript of record be marked Exhibit A, and that the above described transcript of testimony taken and proceedings had

be marked Exhibit B, and that the record on appeal contain them properly marked as evidence introduced into the case, that the same may be printed as part of the appeal book in the Supreme Court of the United States.

Dated November 20, 1915.

JOHN S. KETCHAM, JR., *Petitioner.*

67 STATE OF NEW YORK,
County of New York, ss:

On this 20th day of November, 1915, personally appeared before me, a Notary Public in and for the said County, John L. Ketcham, Jr., who, being, *being* duly sworn, says, that he has read the foregoing petition, by him subscribed, and knows the contents thereof, and that the same is true of his own knowledge.

JOHN L. KETCHAM, JR.

Sworn to before me this 20th day of November, 1915.

[NOTARIAL SEAL.] DOROTHY M. LANG,
Notary Public No. 301, New York County.

Commission expires March 30, 1917.

68 In the District Court of the United States in and for the Northern Division, Eastern District of Michigan.

In Equity.

JOHN L. KETCHAM, Jr., Petitioner-Appellant,

vs.

COLONEL BELL BURR et al., Defendants and Appellees.

STATE OF NEW YORK,
County of New York, ss:

John L. Ketcham, Jr., being duly sworn, deposes and says: That he is the complainant and appellant in the above entitled cause. That on the 16th day of October, 1913, deponent in company with Dell H. Thompson, Esq., who acted as deponent's counsel, was present in the said Court when the above entitled cause was called for trial by the Hon. Arthur J. Tuttle, the Judge of the said Court. That the defendants were not represented at the trial. That Mr. Thompson addressed the Court, and explained briefly the facts and questions of law involved. That thereupon, deponent, through Mr. Thompson, secured permission from the Court to add a few words to Mr. Thompson's statement, and stated that he had in his possession two documents, which he exhibited to the Court, and further stated that he offered them as exhibits in evidence, and as complete proof upon which he based his right to the relief for which he prayed. That said documents and exhibits consisted of two certified tran-

scripts, the first of a duly authenticated copy of the record of the proceedings referred to in the bill of complaint, on file with the Register of the Probate Court of the County of Genesee, State of Michigan; and the other a copy, duly certified by the official stenographer
69 of the said Probate Court as a true and correct copy of the testimony taken and proceedings had on the hearings in the said proceeding. That deponent handed these two documents and exhibits to Mr. Thompson, together with a memorandum of the law in the case endorsed "Brief for Petitioner," and presented in accordance with the local equity rules of the said Court. Mr. Thompson in turn handed them to the Court in person, together with other papers unknown to the deponent, and the Court received them with the words, "This is the complete case then." Mr. Thompson said that it was, Court was thereupon adjourned.

JOHN L. KETCHAM, JR.

Sworn to before me this 20th day of November, 1915.

[NOTARIAL SEAL.] DOROTHY M. LANG,
Notary Public No. 301, *New York County.*

Commission Expires March 30, 1917.

70 In the District Court *for* the United States in and for the Eastern District of Michigan, Northern Division.

In Equity.

JOHN L. KETCHAM, Jr., Petitioner-Appellant,

vs.

COLONEL BELL BURR et al., Defendants and Appellees.

STATE OF MICHIGAN,
County of Bay, ss:

Dell H. Thompson, being duly sworn deposes and says that he is the Solicitor for the above named John L. Ketcham, Jr., and that upon the 16th day of October, 1913, the above entitled cause was brought on to be heard in the District Court, at Bay City, Michigan.

That upon the above date and at the above mentioned hearing, deponant offered in evidence and handed to the presiding Judge, Arthur J. Tuttle as exhibits in the above mentioned cause, first, a duly authenticated copy of the record of the proceedings for the adjudication of the Complainant as a private insane person, had at the Probate Court Office in Genesee County, Michigan, and second, a duly and properly certified copy of the testimony taken and the proceedings had at the hearing in said proceedings.

DELL H. THOMPSON.

Subscribed and sworn to before me this 22nd day of November, 1915.

WM. GAFFNEY,
Notary Public, Bay County, Michigan.

My Commission expires June 14, 1919.

Filed Nov. 23, 1915. Elmer W. Voorhies, Clerk, by Isabel A. Ballou, Deputy Clerk.

71 *Objections of Defendants to Incorporating Exhibits in Record on Appeal.*

In the District Court of the United States in and for the Northern Division, Eastern District of Michigan.

In Equity.

JOHN L. KETCHAM, Jr.,

vs.

COLONEL BELL BURR et al.

The defendants in the above entitled cause object to any exhibits being included, or incorporated, in the record on appeal in the above entitled cause, for the reason that there were no exhibits entitled in the cause at the time of the hearing thereof, and no exhibits were entitled or filed in said cause until more than two years after the final decree dismissing the Bill of Complaint had been made and entered.

The defendants insist that the only papers which can be included or incorporated in the record on appeal in said cause are the Bill of Complaint, the amendment thereto, the Defendants' answer, the Decree of the Court, the petition for appeal and allowance thereof, the citation and acknowledgement of service thereof and the assignment of errors.

JOHN J. CARTON,
Attorney for Appellees.

Filed Nov. 26, 1915. Elmer W. Voorheis, Clerk.

72 *Order Denying Complainant's Petition to Incorporate Papers in Appeal Record.*

At a session of the District Court of the United States for the Eastern District of Michigan, Northern Division, continued and held pursuant to adjournment at the District Court Room in the City of Detroit in said District, on Monday the Sixth day of December in the year of our Lord one thousand nine hundred and fifteen.

Present: The Honorable Arthur J. Tuttle, District Judge.

In Equity. No. 167.

JOHN L. KETCHAM, Jr.,

vs.

COLONEL BELL BURR et al.

In this cause the petition of complainant herein, for leave to file and incorporate in record on appeal, two certain copies of transcript of proceedings in the Probate Court for the County of Genesee in this District, having been duly noticed and coming on for hearing on this day, oral argument by counsel for respective parties being waived by the Court after reading said petition and affidavit in support thereof, and the objections of defendant- to the granting of said petition, the court being duly advised in the premises, doth now here order that the said petition be and the same is hereby dismissed and application denied.

ARTHUR J. TUTTLE,
United States District Judge.

73 *Complainant's Second Præcipe for Appeal Record.*

In the District Court of the United States in and for the Northern Division, Eastern District of Michigan.

In Equity.

JOHN L. KETCHAM

vs.

COLONEL BELL BURR et al.

The Præcipe of John L. Ketcham, Jr. Petitioner, Appellant, for Record on Appeal.

To the Clerk of said Court:

In the petitioner's appeal of the above entitled cause in Equity to the Supreme Court of the United States, please incorporate into the transcript of the record on appeal the following papers.

The petition for the admitting in the record of the probate proceedings and testimony, had in the Probate Court for Genesee County, Michigan, the affidavits in support of said petition, the objections filed to said petition, and the order denying said petition.

DELL H. THOMPSON,
Attorney for Appellant.

Filed January 4, 1916. Elmer W. Voorheis, Clerk, by Isabel A. Ballou, Deputy Clerk.

74 *Order Extending Time to File and Docket Appeal Record to Dec. 9, 1915.*

At a session of the District Court of the United States for the Eastern District of Michigan, Northern Division, continued and held pursuant to adjournment at the District Court Room in the City of Bay City, in said District, on Wednesday the tenth day of November in the year of our Lord one thousand nine hundred and fifteen.

Present: The Honorable Arthur J. Tuttle, United States District Judge.

In Equity. No. 167.

JOHN L. KETCHAM, Jr.,

vs.

COLONEL BELL BURR et al.

Upon the application of the Clerk of this court for cause shown, it is by the Court now here ordered that the time in which to file and docket printed record on appeal in this cause, be and the same is hereby extended to and including the ninth day of December, 1915.

ARTHUR J. TUTTLE,
United States District Judge.

75 *Order Extending Time to File and Docket Appeal Record to Jan. 8, 1916.*

At a session of the District Court of the United States for the Eastern District of Michigan, Northern Division, continued and held pursuant to adjournment at the District Court Room in the City of Bay City, in said District on Thursday the ninth day of December, in the year of our Lord one thousand nine hundred and fifteen.

Present: The Honorable Arthur J. Tuttle, United States District Judge.

No. 167. In Equity.

JOHN L. KETCHAM, Jr.,

vs.

COLONEL BELL BURR et al.

Upon the application of the Clerk of this Court for cause shown, it is by the Court now here ordered that the time in which to file and docket printed record on appeal be and the same is hereby extended to and including the 8th day of January, 1916.

ARTHUR J. TUTTLE,
United States District Judge.

76 *Order Extending Time to File and Docket Appeal Record to Feb. 8, 1916.*

At a session of the District Court of the United States for the Eastern District of Michigan, Northern Division, continued and held pursuant to adjournment at the District Court Room in the City of Bay City, in said District on Saturday the eighth day of January, in the year of our Lord one thousand nine hundred and sixteen.

Present: The Honorable Arthur J. Tuttle, District Judge.

No. 167.

JOHN L. KETCHAM, Jr.,

vs.

COLONEL BELL BURR et al.

Upon the application of the Clerk of this Court for cause shown, it -- by the Court now here ordered that the time in which to file and docket printed record on appeal be and the same is hereby extended to and including the 8th day of February, 1916.

ARTHUR J. TUTTLE,
United States District Judge.

77 UNITED STATES OF AMERICA:

The District Court of the United States for the Eastern District of Michigan, Northern Division.

No. 167. In Equity.

JOHN L. KETCHAM, Jr.,

vs.

COLONEL BELL BURR et al.

EASTERN DISTRICT OF MICHIGAN, *ss:*

I, Elmer W. Voorheis, Clerk of the District Court of the United States for the Eastern District of Michigan, do hereby certify and return to the claim of appeal of the above named plaintiff; that it is a true copy of the record and proceedings in said cause as designated by counsel; that I have compared the copies with the originals, and it is a true and correct transcript therefrom and of the whole thereof as designated.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at Bay City, in said District, this 15th day of January, in the year of our Lord one thousand nine hundred and

sixteen, and of the Independence of the United States of America the one hundred and fortieth.

[Seal of the U. S. District Court, Eastern District of Mich.]

ELME[illegible]W. VOORHEIS, *Clerk.*

[United States internal revenue documentary stamp, series of 1914, 10 cents, canceled 1/15/16. E. W. V.]

78 In the Supreme Court of the United States.

JOHN L. KETCHAM, Jr.,

vs.

COLONEL BELL BURR et al.

The United States of America to Colonel Bell Burr, David S. Frackelton, James C. McGregor, John C. Graves, Howard Mason, John J. Carton, Colonel O. Swayze, Judge of the Probate Court, County of Genesee, State of Michigan; Trent Bowles, Register of the Probate Court, County of Genesee, State of Michigan, and Oak Grove, a Corporation of the State of Michigan:

You and each of you are notified that in a certain case in Equity in the District Court of the United States in and for the Northern Division, Eastern District of Michigan, wherein John L. Ketcham, Jr., is complainant and Colonel Bell Burr, David S. Frackelton, James C. McGregor, Howard Mason, John C. Graves, John J. Carton, Colonel O. Swayze, Judge of the Probate Court, County of Genesee, State of Michigan, Trent Bowles, Register of the Probate Court, County of Genesee, State of Michigan and Oak Grove, a corporation of the State of Michigan, are defendants, an appeal has been allowed the complainant therein to the Supreme Court of the United States, and you are hereby cited and admonished to be and appear
79 in said Court at Washington, D. C. the tenth day of November, A. D. 1915, to show cause, if any there be, why the order and decree appealed from should not be corrected and why speedy justice should not be done the parties in that behalf.

Witness the Honorable Edward Douglass White, Chief Justice of the United States, this Twelfth day of October in the year of our Lord one thousand nine hundred and fifteen, and of the Independence of the United States, the one hundred and fortieth.

[Seal of the U. S. District Court, Eastern District of Mich.]

ARTHUR J. TUTTLE,
United States District Judge.

Due and timely service of the within citation is hereby accepted. Oct. 14, 1915.

JOHN J. CARTON,
Attorney for Defendants.

[Endorsed:] No. 167. United States District Court, Eastern District of Michigan, Northern Division. John L. Ketcham vs. Colonel Bell Burr et al. Citation. Filed October 15, 1915. Elmer W. Voorheis, Clerk, by Isabel A. Ballou, Deputy.

Endorsed on cover: File No. 25,165. E. Michigan D. C. U. S. Term No. 399. John L. Ketcham, Jr., appellant, vs. Colonel Bell Burr, David S. Frackelton, James C. McGregor et al. Filed March 4th, 1916. File No. 25,165.

BRIEF FOR APPELLANT

Supreme Court of the United States

OCTOBER TERM, 1917

No. 114

JOHN L. KETCHAM, Jr.

Appellant

vs.

COLONEL BELL BURR, DAVID S. FRACKELTON, JAMES C. McGREGOR, et al.

Defendants

Appeal from the District Court of the United States for the Eastern District of Michigan

Tel. 1607 Worth **THE WEIBEZAHL PRINT** 25 Elm St., N. Y.
—1917—

(25165)

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Supreme Court of the United States

OCTOBER TERM, 1917.
No. 114.

JOHN L. KETCHAM, JR.,
Petitioner-Appellant,
v.
COLONEL BELL BURR, DAVID S. FRACKELTON, JAMES E. MCGREGOR, JAMES N. BUCKHAM, HOWARD MASON, JOHN C. GRAVES, JOHN J. CARTON, COLONEL O. SWAYZE, Judge of the Probate Court, County of Genesee, State of Michigan; TRENT BOWLES, Register of the Probate Court, County of Genesee, State of Michigan; OAK GROVE, a Corporation of the State of Michigan,
Defendants.

Appeal from the District Court of the United States for the Eastern District of Michigan.

BRIEF FOR PETITIONER-APPELLANT.

Preliminary Statement.

This is an appeal by John L. Ketcham, Jr., from a decree of the District Court of the United States for the Northern Division, Eastern District of Michigan, dismissing his bill in equity.

The District Court has certified the record as of a hearing on bill and answer, without evidence. That part of the complaint of primary importance, and containing all facts essential to the relief sought, is found in Pars. 1 to 12, inclusive (Rec. pp. 1-11, fols. 1-17), in Pars. 31-32 (Rec. pp. 20-21, fols. 33-34), and in Pars. 38, 39, and the first sentence of Par. 40 (Rec. pp. 22-23, fols. 36-37). Of the remainder of the bill a part, aside from its value as cumulative evidence that due process of law was nullified by fraud and violence, serves only to negative any possible imputation of laches, which is amply negatived by the above paragraphs; a part was inserted only to clarify and explain other parts of the bill, and a very small part is specifically denied in the answer.

The bill invokes the powers of the District Court under 1913 U. S. Comp. Stat. 3932, which grants a right of action to anyone deprived of a constitutional right under color of state law, and 1913 Comp. Stat. 991, clause Fourteenth, which confers jurisdiction in such cases on the District Courts. The appeal is made direct to the Supreme Court under 1913 Comp. Stat. 1215, granting such right of appeal, and on the ground that the case involves the application of the Constitution as a controlling factor submitted to the consideration of the Court, according to the rule in *Carey v. Railway Co.*, 150 U. S. 170, 181, in this: first, that the pleadings establish that a court of one State, acting under color of its laws, took jurisdiction, in a purely personal proceeding, of the permanent or general status of the complainant, who was a citizen of another State; that this state court then adjudged him insane and deprived him of liberty and property

under color of the interdiction, all without presentation of any kind whatever in court of facts tending to show jurisdiction of the subject matter in the former State, whether on grounds of right to exercise its police power or on any other grounds: second, pleadings establish that the defendants forcibly prevented the complainant from conducting his defense by the means provided by law, and from obtaining the protection thereof: and third, that the bill prays the Court for a decree which will restore his property and civil rights and adjudge such proceeding of the state court null, void and unconstitutional as an exercise of jurisdiction extra-territorial to the State, without due process of law and in violation of the Thirteenth and Fourteenth Amendments and other provisions of the Constitution, and for an injunction to prevent further use being made of the judgment and interdiction, or further litigation of the matter.

The dismissal of the bill was decreed as after a hearing on bill, answer and replication, which is now bill and answer, and the pleadings and record must now be read in the light of the following Equity Rules:

> "Rule 19. *Amendments generally.* The court may at any time, in furtherance of justice, upon such terms as may be just, permit any process, proceeding, pleading or record to be amended, or material supplemental matter to be set forth in an amended or supplemental pleading. The court, at every stage of the proceeding, must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties.
>
> "Rule 30. *Answer—Contents—Counterclaim.* The defendant in his answer shall in short and simple terms set out his defense

to each claim asserted by the bill, omitting any mere statement of evidence and avoiding any general denial of the averments of the bill, but specifically admitting or denying or explaining the facts upon which the plaintiff relies, unless the defendant is without knowledge, in which case he shall so state, such statement operating as a denial. Averments other than of value or amount of damage, if not denied, shall be deemed confessed, except as against an infant, lunatic or other person non compos and not under guardianship, but the answer may be amended, by leave of the court or judge, upon reasonable notice, so as to put any averment in issue, when justice requires it. * * *

"Rule 31. *Reply—When required—When cause at issue.* Unless the answer assert a set-off or counter-claim, no reply shall be required without special order of the court or judge, but the cause shall be deemed at issue upon the filing of the answer, and any new or affirmative matter therein shall be deemed to be denied by plaintiff. * * *

"Rule 81. *These rules effective February 1, 1913—Old rules abrogated.* These rules shall be in force on and after February 1, 1913, and shall govern all proceedings in cases then pending or thereafter brought, save that where in any then pending cause an order has been made or act done which cannot be changed without doing substantial injustice, the court may give effect to such order or act to the extent necessary to avoid any such injustice.

"All rules theretofore prescribed by the Supreme Court, regulating the practice in suits in equity, shall be abrogated when these rules take effect."

The bill in equity was filed May 11, 1912 (Rec. p. 27, fol. 43), the answer on July 16, 1912 (Rec. p. 34, fol. 55), and the hearing took place October 18th, 1913 (Rec. p. 35, fol. 56). The cause was

therefore pending when the new rules went into effect, and the answer must be given the interpretation prescribed by them, to the effect that "Averments—(of the bill) if not denied, must be deemed confessed," etc., Rule 30. This rule came into effect while the answer was still on file but before the hearing, and both warned the defendants of the interpretation which would be given to their answer, and afforded them opportunity to amend it if such interpretation did not express their defense as intended. Rule 19 also extends full opportunity to amend at any time, and Rule 81 shows beyond question that the Supreme Court intended parties to cases "then pending," like the present, should be required to amend their pleadings if the new interpretation would not express their meaning as intended. Having failed to amend before the hearing or make any application or motion whatever to the judge relative to the matter, the defendants must now be held to have elected that their answer should be given the interpretation prescribed by the new rules, as expressive of their defense. Nor would this be a retroactive application of the new Equity Rules, for laws are invalid as retroactive only when they alter a vested right, and since the new rules afford opportunity to amend, no right to interpretation under the old could vest. Moreover, these rules should be strictly interpreted and rigidly enforced, for to relax them in favor of the one party is but to strain them against the other, and such a course would not only work injustice, but destroy all certainty of pleadings and results of hearings on bill and answer.

The Facts as Shown by the Pleadings.

The defendants' answer is the sworn admission of the Judge of the Probate Court whose acts the bill seeks to set aside, of the Register of the court at that time, the parties applying to the court and their attorney, as well as of the present Judge and Register of the court. These are the persons most conversant with the facts and the weightiest witnesses who might be called to establish any occurrence in the court at that time. They are also the ones most inclined, whether by duty or by interest, to uphold the proceedings complained of, and are well qualified to realize the full purport of their admissions in the eye of the law. An exhibition of the transcript of the record would add no weight to these admissions, coming as they do from the former Judge and Register, the only ones qualified to make or certify to the record. Nor could such an exhibit prove more than all the parties admit, that on its face the record was one of a valid and regular proceeding. For similar reasons the transcript of the testimony as an exhibit could add nothing to the weight of these admissions, especially as it will be observed that the pleadings present no issue of fact whatever on any point essential to the relief prayed in the bill, but only on unessential and corroborative points. On all points vital to the relief prayed the pleadings are equivalent to the agreed statement of fact provided for by Equity Rule 77.

The commencement and Par. 1 of the bill of complaint (Rec. p. 1, fols. 1-3) aver that the defendants are citizens of Michigan and residents of the judicial district in which the bill is brought, except Oak Grove, which is a corporation of Michigan owning and operating in the

city of Flint, Genesee County, that State, as its principal place of business, an asylum for the insane. Of this asylum the defendant Burr was superintendent and general manager, and the defendant Mason the chief attendant. Of the other defendants, Frackelton was Judge and Graves Register of the Probate Court of that county at the time of the acts complained of, and Swayze and Bowles respectively Judge and Register of that court at the time the bill was filed in the District Court. Carton was a lawyer and McGregor and one Buckham, originally made party, were physicians. The answer to this paragraph admits these facts, with the unimportant exception that Buckham had since died. In view of this fact the complainant filed a wholly superfluous amendment changing the wording of the bill to accord (Rec. p. 28, fol. 45). The answer also denies matter not averred in the bill, that Oak Grove was incorporated under a certain statute. In Pars. 2 and 3 of the bill complainant advances inconvenience and substantial identity of interest as reasons for failing to include as parties defendant other participants in the acts complained of (Rec. p. 2, fols. 3-4). Though the answer disputed in a minor particular an averment to this effect (Rec. p. 29, fol. 47, par. 2), it is plain that justice does not require the inclusion of further parties.

Pars. 4 and 5 of the bill (Rec. p. 3, fols. 4-5) aver that on May 4th, 1906, the defendant Burr, as an officer of Oak Grove asylum, applied to Frackelton as judge for an inquisition in insanity and an order of commitment to Oak Grove against the complainant; that Frackelton thereupon ordered the inquisition, appointed Buckham and McGregor examining physicians, and held a

hearing in the Probate Court whereat the two latter certified that the complainant was insane; and that Frackelton thereupon adjudicated that the complainant was insane and committed him to Oak Grove. The proceedings were taken under color of the laws of Michigan, more especially of Public Act No. 217, Acts of the Legislature, 1903. The defendants in their answer deny none of these facts, but assert that the proceedings were legal and regular, and that they were for the benefit of the complainant and he was represented by counsel. The first of these assertions is a mere conclusion of law, and the two latter are new matter and immaterial. These two paragraphs of the complaint therefore stand unanswered and confessed (Rec. pp. 29-30, fols. 47-48, pars. 4-5).

Par. 6 of the complaint (Rec. pp. 3-7, fols. 5-10) avers that the above acts were fraudulent, void and contrary to the laws of Michigan and of the United States for the following reasons: That the complainant was and had always been a citizen and resident of Indiana, and except for one immaterial exception was never in Michigan before this time. That on the night of May 2 he was forcibly taken from Indianapolis, Indiana, and brought to Oak Grove asylum in Flint, Michigan, by certain persons, among them David M. and Ralph M. Ketcham. That immediately upon arriving at Oak Grove the two latter informed defendants Burr, Mason and Oak Grove of what they had done, and that their purpose was to procure the imprisonment of the complainant under color of the laws of Michigan. Burr, Mason and Oak Grove joined themselves with these purposes, held the complainant, made application to Frackelton as described, and em-

ployed the defendant Carton to prosecute the inquisition. That at the hearing in the Probate court the said David M. Ketcham and Ralph M. Ketcham under colorable oath as witnesses fully confessed their acts and designs as set forth, and fully apprised the defendants Burr, Mason, Frackelton, Carton and McGregor, together with Buckham, of the acts and designs above, and these defendants joined themselves with such designs and pursuant thereto proceeded with and completed the hearing and commitment. The bill then avers (Rec. pp. 5-7, fols. 8-10) a conspiracy on the part of the above named persons to oppress the complainant, by means of such commitment and manner of enforcing the laws of Michigan, in the free exercise of his constitutional rights, more particularly of those secured to him by the Fourteenth Amendment to and Art. 4, Sec. 2 of the Constitution. Together with all other averments of conspiracy in the bill, this was inserted solely to refute any imputation of laches, and to explain the complainant's delay in bringing his bill.

The answer to this paragraph (Rec. p. 30, fol. 48) denies fraud, illegality or conspiracy in their acts, which are mere conclusions of law. Its further assertions and denials are as follows:

> "They further say that they have no personal knowledge of what occurred prior to the arrival of the complainant in the city of Flint, and they therefore neither admit nor deny the allegations contained in said paragraph as to these occurrences. They admit, however, that on May 3, 1906, the complainant was brought to Oak Grove for medical care and treatment. * * *. They also deny that the complainant was at any time imprisoned in Oak Grove, or that there was any intention of imprisoning him there,

> but on the contrary that there was a desire on the part of his family and friends that he should remain there for a time and receive medical care and treatment, and that was the only purpose in instituting the proceedings hereinbefore described."

This comprises the whole material answer to this paragraph. It leaves undenied that the complainant was a citizen of Indiana, for no denial "of what occurred prior to the arrival of the complainant in the city of Flint" could be stretched to include a denial of his citizenship. Citizenship is not an occurrence, but a fact, and denials must be taken most strongly against the pleader. Equity Rule 30, supra, requires that the answer shall specifically deny or explain the facts upon which the plaintiff relies, "unless the defendant is without knowledge, in which case he shall so state, such statement operating as a denial."

It becomes at once a question as to what construction should be placed on this term, "personal knowledge," and whether such a denial is the equivalent, and the defendants intended by its use to convey the equivalent, of the denial of knowledge which Rule 30 permits to be taken as a denial of the averment. The answer is to be gathered from the context, where the defendants have used the same term with unmistakable meaning, and from the ancient and common usage and meaning of the term in equity pleading.

From the context the meaning of the term can be gathered by referring to Par. 11 of the bill (Rec., p. 9, fol. 14) and the answer thereto (Rec., p. 31, fol. 50, par. 11, and p. 33, fol. 53, par. 23). Here it appears that certain papers were taken from the complainant and admitted in evidence at the hearing as exhibits prepared

by the complainant, all without any "personal knowledge" on the part of the defendants with regard to such matters (Rec., fol. 50). From this use and meaning, then, it follows that in denying "personal knowledge of what occurred prior to the arrival of the complainant in the City of Flint" the defendants do not intend to include a denial of knowledge imparted by the testimony, confessions and apprisals of fact subsequent to such arrival, as averred in the bill.

Moreover, by the settled and ancient usage of the terms, all knowledge in equity pleadings consisted of "personal knowledge" and knowledge by "information and belief." In admissions this distinction was of no moment, for an admission by information and belief is taken as an unqualified admission.

> 2 Daniell's Chancery Pl. and Pr. (4th Amer. Ed.), 840.

On the other hand, a denial of either of these forms of knowledge, "personal knowledge" or "information and belief", is not taken as including a denial of the other form.

> *Norton v. Warner,* 3 Fxw., 106 (N. Y. Ch.);
> *Bradford v. Geiss,* 4 Wash. CC., 513, Fed. Cas. 1768;
> *Brooks v. Byarı,* 1 Story, 296, Fed. Cas. 1947;
> *Burpee v. First National Bank,* 5 Biss., 405, Fed. Cas. 2185.

Story, Equity Pleading (1870 Ed.), page 854, makes the distinction plain:

> "But as to the facts, which have not happened within his own knowledge, he must an-

swer as to his information and belief. * * *

"Neither is it necessary that the defendant should say in so many words, that he has no knowledge, information or belief, in relation to the charge in the bill; it is sufficient, if he use any other expression, which in substance necessarily amounts to the same thing."

By both usage and context, therefore, it is clear that the defendants intended to confess information and belief on the matters alleged, and this meets neither the wording nor the meaning of Equity Rule 30. That Rule, in providing that a denial of knowledge be taken as a denial absolute, could not have intended the self-contradictory and absurd result that a denial of personal knowledge admitting knowledge by information and belief be taken as a denial of the fact. Such a meaning would render it impossible to confess a fraudulent act by a judicial officer.

Nor does a denial of "personal knowledge" so construed raise any issue in this case, for the bill avers a fraud by judicial officers and proceedings, in that a judgment was entered without jurisdiction. From the nature of things, such officers must act on information and belief, and the bill avers, and the answer confesses, all knowledge necessary to confess the proceedings fraudulent and void, as well as to constitute a conspiracy.

The answer also denies "that the complainant was at any time imprisoned in Oak Grove," but looking forward again to Par. 14 of the answer (Rec. p. 32, fol. 51), it is admitted that pursuant to the commitment by the Probate court the complainant was taken to Oak Grove "and there detained." The law recognizes no distinction between imprisonment and detention in an asylum for the insane pursuant to a commitment. Such pleadings are repugnant, insensible and void. *U. S. v. Benner,* Baldw. 234; 24 Fed. Cas. No. 14568.

The answer contains here the important admission that "the only purpose in instituting the proceedings"—was "that he should remain there (at Oak Grove) for a time and receive medical care and treatment." This admission with regard to the purpose of the proceedings is repeated again in Par. 21 of the answer, (Rec. p. 33, fol. 53) where the defendants "aver that what was done, was done to improve his (complainant's) health and mental condition and for no other purpose." Nothing could be more specific than this in admitting that the Probate Court did not assume jurisdiction for the purpose of exercising the police powers of Michigan, but solely for the purpose of exercising the *parens patriae* power of that State.

Pars. 7 and 8 of the complaint cover, in amplified terms, much the same ground as the above. No evidence or allegation was put before the Probate Court at the hearing which might tend to show grounds for the exercise of the authority of Michigan to adjudicate his status as sane or insane, whether in the exercise of its police powers or on any other pretext of any kind. Moreover these defendants well knew that the complainant was not a citizen of Michigan, but a citizen of Indiana (Rec. p. 7, fol. 11). The nature of the fraud on the jurisdiction of the State of Michigan is recapitulated in Par. 8 (Rec, p. 7, fol. 12). The complainant was brought from Indiana, the State of his domicile, into Michigan for the express purpose of this adjudication and no allegation or evidence was presented to the Probate Court tending in any way to establish any authority of Michigan or its officials to exercise jurisdiction over the subject matter of his status.

At this point it is convenient to define the nature of the subject matter of which the Pro-

bate Court did take jurisdiction, whether of the permanent and general status or of some temporary and special status of the complainant. Evidence of this can be gathered from both the record made by the Probate Court and the facts *aliunde,* that is, the whole pleadings and the statutes of the State, but the final test of just what the Probate Court intended to assume, and did assume, jurisdiction of as its subject matter of adjudication is the record which the judge and other defendants made and imposed on the records of the court. Their acts were done and records made in due and proper form (Rec. p. 8, fol. 13, Par. 10 and p. 31, fol. 49, Par. 10) and for a certain purpose, to adjudicate the legality of, and to enforce, the detention of the complainant. The bill charges the defendants purposed to extend this detention throughout the complainant's life (Rec. p. 11, fol. 17, Par. 12, and p. 21, fol. 34, Par. 33). The defendants aver they purposed the detention to be "for a time" (Rec. p. 30, fol. 48, Par. 6), but not "for any period" (Rec. p. 32, fol. 52, Par. 16). From the ordinary meaning of words this shows that their purpose was to make an indeterminate commitment of a permanent nature and a corresponding adjudication of his status. This is further evidence by the defendants' acts. The complainant was committed May 19th, 1906 (Rec. p. 3, fol. 4, Par. 4, and p. 30, fol. 47, Par. 4), and held till he made a forcible escape October 22nd, following (Rec. p. 22, fol. 36, Par. 38, and p. 32, fol. 52, Par. 20). After the lapse of eleven years the adjudication, like its consequences, still "remains in full force and effect" (Rec. p. 33, fol. 53, Par. 22, and p. 8, fols. 12-13, Par. 9).

Furthermore, "regular and valid" commitments or detentions in asylums are by the statutes of

Michigan limited to either indeterminate commitments under adjudications of general status, as described, or to temporary detentions for a very definite "period" under adjudication of the special status of being in need thereof. These temporary detentions and adjudications of temporary status are of three kinds, those pending the trial of the general status, those pending appeal therefrom, and those pending the removal of the respondent to the State of his domicile. They are respectively provided for by the three following sections of the statute, 1903 Acts Mich. No. 217—

> "Sec. 16 * * * Pending such proceedings for admission into the asylum, if it shall appear, upon the certificate of two legally qualified physicians, to be necessary and essential so to do, the court may order the alleged insane person to be placed in the custody of some suitable person, or to be removed to the asylum of the district in which he resides, or to any hospital, home or retreat, or to be detained until such petition can be heard and determined: *Provided, however,* That the period of such temporary detention shall not exceed thirty days, unless the court shall, by special order, enlarge the time. * * *.
>
> "Sec. 51. Any person aggrieved by any order, sentence, decree or denial of the probate court, may appeal therefrom to the circuit court for the same county * * *. The court may also, during the pendency of said appeal, make such order for the temporary care or confinement of the alleged insane person as may be deemed to be necessary.
>
> "Sec. 30. The asylums are intended for the benefit of the bona fide residents of the State. A non-resident may be admitted to an asylum to receive such temporary care as he may require, pending his return to his home. The board of trustees shall cause any person

> who has been admitted to an asylum, but who has not acquired a legal settlement in this State, to be removed as soon as possible to the country or state to which he belongs * * *."

The defendants in their pleadings have specifically denied that the adjudication and commitment under consideration were for any of the purposes and sharply defined periods here authorized, and the only other form of adjudication and commitment provided for by the statute deals with matters of a permanent nature.

Nor did the Probate Court concern itself with any special status of the complainant independent of the commitment and properly within its police powers, so that the adjudication of the status might be valid though the commitment were invalid. In his capacity as officer of Oak Grove asylum the defendant Burr petitioned the Probate Court for an adjudication of the complainant's status and his commitment thereto (Rec. p. 3, fol. 4, Par. 4); and this Burr could only have done under 1903 Acts Mich. No. 217, Sec. 26, referring to Sec. 16, which authorize adjudications of the status of non-residents solely for the purpose of establishing the propriety of their commitment. The defendants also specifically admit (Rec. p. 30, fol. 48, Par. 6) that their acts, proceedings, adjudication and assumption of jurisdiction were solely for the purpose of the commitment. These acts are inseparable, and if the commitment is unlawful the assumption of jurisdiction over the status is also unlawful.

The whole of the pleadings, facts and statutes therefore establish that the Probate Court took jurisdiction of the permanent and general status of the complainant and solely in the exercise of an assumed power of indeterminate commitment.

Pars. 9-10 of the complaint (Rec. p. 8, fols. 12-13), as previously noted, aver that the records complained of were in form lawful and are still maintained as in full force and effect, and have the legal effect of depriving the complainant of constitutional rights. The bill contains the averment that under and by virtue of these records the present judge of the court assumes various rights (Rec. fol. 13), but this is a more or less superfluous matter of law, and is not an averment that the Judge claims power or is threatening to take any action on his own initiative. The answer (Rec. pp. 30-31 fol. 49) makes denial of matters of law in these paragraphs but not of any facts.

Paragraph 11 of the complaint (Rec. p. 9, fol. 14) avers that the complainant was robbed of certain papers in Genesee County by the defendants, who used them as exhibits at the hearing and still retain them under color of right, by the laws of Michigan and the proceedings in the Probate Court, to hold the papers as evidence against the complainant. The jurisdiction taken of the papers is thus averred to have been wholly ancillary and incident to the jurisdiction taken of the person, dependent on it alone and not taken separately under color of right to take jurisdiction of all property within the territorial limits of the powers of the court.

The answer (Rec. p. 31, fol. 50, Par. 11) denies none of these facts, but only fraud and conspiracy, which are epithets of legal effect, and matters of law. Nor is there in the answer any other denial which might cover these averments. It is admitted that the papers are held as a part of the medical records of Oak Grove. The answer (Rec. p. 30, fol. 48, Par. 6) denies

that defendants have any "personal knowledge of what occurred prior to the arrival of the complainant in the City of Flint," but this is no form of denial that the complainant was robbed in Genesee County. Flint is in Genesee County and is so averred (Rec. p. 1, fol. 2, Par. 1) and the robbery might have taken place, and did take place, after the arrival in Flint.

Par. 12 of the complaint (Rec. p. 9, fol. 15) avers that the foregoing acts were committed by the defendants and others pursuant to a conspiracy to oppress the complainant in the free exercise of his constitutional rights, which are enumerated and defined. That they acted in concert to procure the adjudication in the Probate Court is averred in previous paragraphs of the bill, and admitted in the answer (Rec. p. 5, fol. 8, Par. 6). That they intended the legal consequences of their acts must be presumed, and this presumption extends to all the consequences which, in the light of the information they possessed, would naturally result, and be expected to result, from their acts. An averment that action in concert so taken and with such intent constitutes a conspiracy is but an averment of a legal conclusion, the application of an explanatory epithet to clarify a theory of law. Similarly, the various denials found in the answer, of injury, oppression and conspiracy (Rec. p. 31, fols. 49-50, Pars. 10, 12) are denials of legal conclusions, of effects in law which depend wholly on the facts, the acts, knowledge and intent of the defendants as averred in the bill, and therefore deny nothing. *Kent v. Lake Sup. etc. Co.*, 144 U. S. 75, 91.

Pars. 13-30 and 33-37 of the complaint (Rec. pp. 11-22, fols. 18-36) have been described earlier

in this brief as of secondary importance in establishing the complainant's right to relief, but if the Supreme Court entertains any doubt as to his bill disclosing laches on its face, or as to the profound importance of the personal interests here at stake, or the gross abuses which may result from inaccuracy in defining the points of law involved in this bill, then these paragraphs are of the first importance. They aver a continuous conspiracy which originated in an effort of parties other than the defendants, officers of a certain private asylum and others, to procure an adjudication of insanity and commitment against the complainant in Wisconsin. The motives were personal malice and the extortion of money, and the colorable legal proceedings were void *ab initio* for reasons very similar to those which invalidate the present proceedings in Flint. There ensued a struggle of extraordinary extent, duration and ferocity, in the course of which a number of the gravest crimes were committed, including that of kidnapping the complainant from Illinois for the purpose of extorting money (Rec. p. 18, fol. 30, Par. 25), a capital crime by Act May 11, 1901, 1911 Hurd's R. S. Ills. 791, as follows:

> "Every person who shall wilful, unlawfully and forcibly * * * take, carry or send * * * out of this State, any person against his will * * * for the purpose of extorting ransom, or money or other valuable thing * * * shall, upon conviction, suffer death * * *."

In the course of this struggle the complainant was kidnapped from one State to another, always away from the State of his domicile, and compelled to defend himself successively in different States against accusations of insanity until the defendants were employed, and with their co-

conspirators succeeded in procuring in Michigan the fictitious commitment described. To all these averments the answer merely opposes that the defendants had no "personal knowledge" of these matters (Rec. p. 31, fol. 51, Par. 13). That by this defendants do not mean to deny they had full information is evident from their use of the phrase in other parts of their answer, and their specific admissions on the subject (Rec. p. 31, fol. 50, Par. 11, and p. 33, fol. 53, Par. 23). Complainant avers that the defendants' purpose in this last commitment was to prevent him from suing and prosecuting the conspirators under state and federal laws and to conceal the crimes theretofore committed and prevent punishment (Rec. p. 21, fol. 34, Par. 33). If the commitment in Flint was without due process, and to any reasonable person was clearly so, as the pleadings indicate, this would eliminate any presumption of lawful intent on the part of the defendants, and the natural consequences of their acts being criminal, as averred, they must be presumed to have intended crime. Averments that defendants' purpose was that the complainant "should remain there (at Oak Grove) for a time and receive medical care and treatment * * *" (Rec. p. 30, fol. 48, Par. 6) * * * "to improve his health and mental condition" (Rec. p. 33, fol. 53, Par. 21), and that he was committed "to Oak Grove for treatment" (Rec. p. 30, fol. 48, Par. 4, and p. 32, fol. 51, Par. 14), are mere averments of motive, and irrelevant to disprove criminal intent.

These paragraphs of the bill, therefore (13-30 and 33-37), contain no matter vital to the relief sought, yet they are relevant and well worth perusal for their narration of the circumstances of the acts complained of.

The bill then proceeds (Rec. p. 20. fol. 33, Par. 31) with the averment that the complainant was imprisoned in Oak Grove subsequent and pursuant to the commitment, and the answer admits this, though using the word "detained" (Rec. p. 32, fol. 51, Par. 14), which, as has been said, is under the circumstances indistinguishable in law.

Par. 32 of the bill (Rec., p. 20. fol. 33) avers that during this imprisonment the complainant prepared his proper appeal and petition for a writ of habeas corpus addressed to the Circuit Court of Genesee County, and delivered them to Burr, who took and retained them. Subsequently the complainant prepared other petitions of the same nature addressed to that court and to the Courts of the United States for that District, and endeavored to forward them thereto, and the defendant Burr obstructed and prevented him from doing so, and from laying his case before the courts in any form.

To the complainant's averment that Burr took and retained one of the former's appeals addressed to the Circuit Court of Genesee County and delivered to Burr, the latter answers (Rec. p. 32, fol. 51, Par. 15) with the bare denial that he now possesses such an appeal, or knows of its whereabouts. He does not deny that he took the appeal and failed to file it, and his answer is an admission by negative pregnant of this essential part of the averment. He does not deny, and therefore admits, that the complainant's appeal to the Circuit Court of the county was a "proper" one, one fulfilling in form and circumstance all the requirements of law. Burr specifically admits "that some preparation was made by the complainant to take an appeal, but that the same was discouraged." The paragraph con-

cludes with the statement that defendants "have no personal knowledge of the other allegations in said paragraph and therefore can neither admit nor deny the same, etc." There is nothing in the bill or answer to show what is meant by "other allegations," that is, other than what. If it means other than allegations in the bill referring to efforts to appeal, the answer is insensible and absurd, for there are no such "other" allegations in that paragraph of the complaint. The denial is unattached, a sort of floating denial, so to speak, and in fact, a meaningless jumble of words.

The complainant escaped October 22, 1906 (Rec., p. 22, fol. 36, par. 38, and p. 32, fol. 52, par. 20) and brought this bill. He was guilty of no laches, and the defendants have suffered no prejudice by the delay (Rec., p. 23, fol. 37, pars. 39, 40). The bill mentions a discharge subsequently issued by Burr, and styles it fraudulent (Rec., p. 24, fol. 39), and the answer refers to it sarcastically in quotation marks (Rec., p. 33, fol. 53, par. 22), but this matter does not affect the issues, as will be shown from the statute.

Admissions in pars. 22 and 23 of the answer worth noting are that the adjudication of the Probate Court "now remains in full force and effect," and that papers which the defendant Carton "was informed at that time were prepared by the complainant" were used by the former as exhibits at the hearing and are now a part of the medical records of Oak Grove.

To recapitulate the pleadings, the following facts relied upon to establish the complainant's right to relief are found either as specific admissions in the answer or averments in the bill wholly undenied:

The complainant was a citizen of Indiana (Rec., p. 3, fol. 5, par. 6). He was forcibly brought to Oak Grove asylum in the city of Flint, Mich., May 3, 1906 (Rec., pp. 3-4, fols. 5-6, par. 6 and p. 30, fol. 48, par. 6). There the defendants held him in custody and immediately applied to the Probate Court of the county for an inquisition in insanity against the complainant, an adjudication thereof and a commitment to Oak Grove asylum. These they later procured under color of the laws of Michigan, especially of the statute 1903 Acts Mich., No. 217 (Rec., pp. 3-4, fols. 4-6, pars. 4-6). Though in fact unlawful, the acts of the defendants and the official records thereof were in due and lawful form (Rec., p. 8, fol. 12, par. 9). It is certain that the subject matter of the adjudication was not any temporary or special status of the complainant, but his general or permanent status, for the reason that, save for orders of detention pending trial or appeal, the only manner in which temporary adjudications and commitments for insanity could be made at that time in due and lawful form under Michigan laws were by Sec. 30 of the statute above, providing for the temporary admission of a non-resident of the State pending removal to his home, as quoted above. The only other forms of commitment by law were permanent commitments for an indefinite period, authorized by Secs. 16 and 26, quoted below. Both bill and answer establish that the form and purpose of the commitments were not temporary, but permanent and indeterminate. The bill avers the purpose was to imprison the complainant for life (Rec., p. 11, fol. 17, par. 12, and p. 21, fol. 34, par. 33). The answer avers that the sole purpose of the adjudication was detention for a "time" (Rec., p. 30, fol. 48, par. 6), but not for life or "for any period" (Rec., p. 32, fol. 52,

par. 16), which must mean for an indefinite term. Under color of the commitment the complainant was held in Oak Grove from May 19, 1906, till October 22 following, when he escaped (Rec., fols. 4, 33 and 36). Nothing has transpired to remove the legal effect of these records (Rec., p. 24, fol. 39), but they are ostensibly still "in full force and effect" (Rec., p. 33, fol. 53, par. 22), being now maintained as such by defendants on the records of the Probate Court, and by virtue of them the defendants assume to possess certain powers to take lawful judicial action in the matter of the complainant's status (Rec., p. 8, fols. 12-13, par. 9).

At the hearing in the Probate Court no allegation or evidence was presented tending to put forth any proof or pretense that it was lawful or necessary for the State of Michigan to adjudicate the complainant's status or assume jurisdiction of it, whether in the enforcement of the police powers of the State or on any other pretext (Rec., pp. 7-8, fols. 11-12, pars. 7-8). Other parts of the pleadings establish that the complainant was present in court and certificates of insanity were presented by local physicians, but nothing else is anywhere pleaded relating to the jurisdiction of Michigan over the complainant's general or permanent status. To these averments of the bill, of lack of jurisdictional presentations in the Probate Court, the defendants answer that their "only purpose in instituting the proceedings" * * * was that the complainant "should remain there for a time and receive medical care and treatment" * * * (Rec., p. 30, fol. 48, par. 6), and "they aver that what was done was done to improve his health and mental condition and for no other purpose" (Rec., p. 33, fol. 53, par. 21), "he was committed to Oak Grove for treatment" * * *

(Rec., p. 32, fol. 52, par. 20); "he was taken to Oak Grove for treatment and medical care and there detained, under and in pursuance of the order of said Court" (Rec., p. 32, fol. 51, par. 14). All this in the answer only serves to confess that the only jurisdictional facts presented in the Probate Court were those averred in the bill, and the defendants were acting with the sole purpose of applying the *parens patriae* power of Michigan to the complainant.

During his detention in Oak Grove the complainant endeavored to exercise the rights granted him by law to forward proper appeals of his case and petitions for writs of *habeas corpus,* but the defendants prevented him from doing so (Rec., p. 20, fol. 33, par. 32, and p. 32, fol. 51, par. 15). Under color of right by the adjudication certain papers were taken from the complainant by the defendants, used as exhibits at the hearing, and are retained by them (Rec., p. 9, fol. 14, par. 11, and p. 31, fol. 50, par. 11) as legal records and evidence against him.

All the averments of the pleadings above enumerated are matters of fact agreed upon by both parties, except insofar as they constitute new and affirmative matter pleaded by defendants. Even the transcripts of the record and testimony in the Probate Court would add no weight of proof regarding these facts, for they are not in issue, and it is on these facts the complainant chiefly relies, as in themselves sufficient to establish his right to relief.

The bill contains other averments of facts which the defendants have answered with a peculiar, evasive and null form of denial, that of "personal knowledge" of such facts, a denial which does not meet Rule 30, and was not intended to, for its use

in the context shows that the defendants did not mean by it to deny knowledge by information (Rec., p. 33, fol. 53, par. 23) or by testimony (Rec., p. 31, fol. 50, par. 11) which convinced them and caused them to take official action.

The complainant avers that he was forcibly brought to Flint from Indiana, his State of domicile, for the special purpose of this inquisition, and the guilty parties, by confession as witnesses at the hearing, fully apprised the defendants of the manner and purpose of his removal (Rec., p. 5, fol. 7, par. 6), and the defendants well knew he was a resident of Indiana, and completed their acts, as averred, in the light of this knowledge (Rec., p. 7, fol. 11, par. 7). To this defendants oppose no denial, unless the Supreme Court considers that their denial, of "personal knowledge of what occurred prior to the arrival of the complainant in the City of Flint" (Rec., p. 30, fol. 48, par. 6) can be extended to refer to these matters, though entered against a previous paragraph of the bill. Even then they could scarcely be considered as denying the above averments in the bill, of testimony in Flint, and complainant's residence in Indiana, for the former took place after the arrival in Flint, and the latter is not an "occurrence" but a fact.

The complainant also avers that all of defendants' acts were done pursuant to a continuous general conspiracy, which is narrated at some length, and the answer denies that the defendants had "personal knowledge" thereof.

The denial of "personal knowledge," therefore, is void, and bad pleading and a nullity because it does not meet Rule 30 nor by either usage or context meet or intend to meet the substance of the averments of the bill, which do not touch

upon, or need to touch upon, this special form of knowledge to make out the case. The defendants in their answer deny matters of law and epithets of legal effect like "fraud, conspiracy, oppression," which are not denials of fact. In addition, they make certain specific denials of trivial and non-essential facts; they deny that the defendant Mason was a guard, but say he was an attendant, and deny that the interests of certain persons not made parties defendant are identical with those of the defendants (Rec., p. 29, fol. 47, Pars. 4-5). Defendants also deny that the complainant was threatened in Oak Grove, and to his averment that he was committed for a perpetual term, answer that he was committed indeterminately. None of these denials of fact affect the issues of the case. It results, therefore, that the bill of complaint, in every essential point, stands fully confessed by the answer.

The pleadings then disclose only one issue, that of law as to whether the judgment of a state court is valid and constitutional, where, first: it has assumed jurisdiction of the permanent and general status of a citizen of another State in a personal proceeding for a commitment, upon the sole grounds, as jurisdictional facts, that the complainant was present in court and alleged to be insane, and second: the defendants, as official custodians of the complainant, have forcibly prevented him from making his defense even in the courts of the State assuming jurisdiction. Aside from this issue of law, the only possible ground of a dismissal must be some fatal defect appearing on the face of the bill.

Introduction.

The case is noteworthy in that it calls in the aid of some of the oldest and most fundamental principles of law to repress a type of invasion of human liberty which has recently been gaining wide foothold in the nation and which, though apparently the most modern of human wrongs, is in reality but a revival of the most ancient in a form thinly disguised. The wrongs considered are of the most vital import in the administration of justice, for if tolerated they would subvert every principle upon which free government is founded. Among them will be recognized the *lettre de cachet,* a practice that is nothing less than interstate slave-trading in white citizens, and a revival of those monstrous privileges granted to corporations by the state in the Middle Ages, though then it was to religious corporations "for the good of one's soul," and now it is to medical corporations "to improve his health and mental condition" (Rec., p. 33, fol. 53, par. 21).

If the law is misapprehended in this brief, and the principles upon which the Probate Court acted should be declared sound, it would be necessary for citizens of means, in absenting themselves from the State of their domicile, to travel with caravans of witnesses and full armaments of proofs of their sanity to guard against eventualities in States whose laws granted authority to individuals and corporations to apprehend and imprison for indeterminate periods, and at the prisoner's expense, any passer-by who, in the ratio between his plenitude of mentality and plenitude of means, might fall short of standards locally established as entitling him to liberty in view of the indigence or pressing financial needs of the

community. Citizens would even be liable to be dragged from their homes to distant States, where they had never before been, there to stand trial for their sanity, in jeopardy of perpetual imprisonment, friendless, destitute, and subject to local laws which they had no voice in framing or administering. An interstate slave trade with all its horrors would spring up, as the pleadings show it has already sprung up, on the part of so-called private sanitariums dealing in invalids or alleged lunatics of means.

Specification of Errors.

Since the District Court merely dismissed the bill without comment (Rec., p. 35, fol. 56) the real error lay in the dismissal, and further assignment or specification of errors is vain except insofar as it may clarify the complainant's brief, for the latter can neither go into the mind of the judge, nor specify nor assign every conceivable error on which this dismissal might have been determined upon. The complainant has made an assignment of error to make sure that Supreme Court Rule 35 was satisfied, and named a few of the primary grounds on which he considered that his right to relief rested, and assigned as error the denial of each ground (Rec., pp. 35-36, fols. 57-59).

Similarly Supreme Court Rule 21 might be satisfied by specifying as error, according to the assignment, purely suppositious holdings by the District Court as follows:

That the District Court had no jurisdiction to grant equitable relief:

That the Probate Court had jurisdiction of the subject matter of its acts;

That the latter court acted within the due process of law;

That its adjudication was not void and unconstitutional;

That this adjudication does not now operate to deprive the complainant of his liberty contrary to the Fourteenth Amendment;

That the defendants did not deprive the complainant of his papers by acts done under color of Michigan laws but without due process thereof and contrary to the Fourteenth Amendment;

That for lack of value the papers were not proper subject matter for equity;

That the deprivation of civil rights disclosed by the bill was not proper subject matter for equitable cognizance;

That the complainant had been guilty of laches;

That the statute against stays by injunction of proceedings in state courts prohibited relief;

In refusing to grant the first special prayer and restore the papers;

In refusing an injunction against the parties under the general prayer.

Yet the process of specifying imaginary errors and then refuting them is, as a method of writing the brief, less convenient than to show the complainant's right to relief by analyzing the pleadings and all points of law on which issue has been joined or which are applicable and in the least obscure or debatable, in the shortest and most direct manner.

Brief of the Argument.

I. The statute gives the District Court jurisdiction.

II. The complainant is under an interdiction of insanity procured by the defendants under color of the laws of Michigan, which, though unlawful, is of judicial record in due and lawful form, and operates to deprive him of liberty and property.

III. The subject matter of equitable cognizance is limited to property and civil rights affecting it in its broadest sense. The bill discloses such subject matter in averring this interdiction and its effect on the complainant's civil rights of liberty and property, and also in averring that, under color of right by, and as an act ancillary to, the commitment complained of, the defendants took and retained complainant's papers.

IV. In a proceeding in insanity against the person, the jurisdiction of the subject matter, the status of the respondent, lies exclusively in the State of his domicile, unless assumed by another State in the exercise of its police power, or temporarily for the purpose of removal, or an emergency.

V. The Probate Court was without jurisdiction of the subject matter, for the complainant was in fact a citizen of Indiana, and, aside from an allegation of insanity, nothing was presented to the court to establish any ground, whether of residence, the provocation of police power, or other, on which the State of Michigan could take jurisdiction of the complainant's general status for the purpose of a permanent commitment.

VI. By arbitrary acts of the defendants, aided by their official position, the complainant was deprived of substantial rights of defense at law granted to him by the laws of Michigan.

VII. The complainant was therefore denied the due process of law. He was also denied the equal protection of law, subjected to servitude without conviction of crime, and denied other constitutional rights.

VIII. The acts of the defendants which constituted a denial of the due process of law, also constituted frauds for which equity will relieve against a judgment.

IX. No adequate remedy at law is available. The judgment is valid on its face, though void in fact as an invasion of constitutional rights, and therefore by statute a bill in equity lies to set it aside. The bill satisfies every requirement for equitable relief.

X. Complainant is entitled, under his first special prayer, to a decree restoring his papers and, by express words or by necessary implication, declaring the adjudication by the Probate Court to be void and unconstitutional.

XI. Under both the second special prayer and the general prayer the complainant is entitled to an injunction directed to the Probate Court itself or to the parties, prohibiting further use of the judgment. Even if this were not the case, nothing connected with the prayer for injunction furnishes any reason for dismissing the bill.

I.

Jurisdiction to decree the relief sought is granted to the District Court by the statutes.

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress." Act Apr. 20, 1871, Ch. 22, 17 St. L., 13, R. S. 1979, 1913 U. S. Comp. Stat., 3932.

"The District Courts shall have original jurisdiction as follows:

"Fourteenth. Of all suits at law or in equity authorized by law to be brought by any person to redress the deprivation, under color of any law, statute, ordinance, regulation, custom, or usage, of any State, of any right, privilege or immunity secured by the Constitution of the United States, * * *" Fed. Jud. Code, Ch. 2, sec. 24, 1913, U. S. Comp. Stat., 991.

This means that when any State, through its officers, attempts to deprive a person of constitutional rights under color of enforcing State laws, he has the right to call into activity in the Federal District Court the remedial legislation provided by Congress, for the purpose of obtaining a judicial decision under the established principles of law, or of equity if he so elects, which will declare the nullity of such effort on the part of the State, and provide suitable remedies for the wrongs suffered.

Civil Rights Cases, 109 U. S., 13;
Carter vs. Greenhow, 114 U. S., 317, 322.

II.

The complainant is now under an interdiction of insanity procured under color of the laws of Michigan and of record in due and lawful form, which is a deprivation of liberty and property.

The proceedings were under color of 1903 Acts, Mich., No. 217, as follows:

> "Sec. 26. Whenever any person alleged to be insane who is not a resident of this State shall be received in any private institution, hospital, home or retreat, for the care and treatment of mental diseases, the Probate Court of the county in which said institution, hospital, home or retreat is located, is authorized and required, on application being made to him by an officer of such institution, hospital, home or retreat, or as provided in section sixteen of this act, to appoint medical examiners, institute an inquest and proceed in such case as provided in said last named section. If such person shall be found and adjudged to be insane, the court may issue an order for his admission as a private patient to such institution, hospital, home or retreat. The expense of such examination and inquest shall be defrayed by the institution, hospital, home or retreat in which such person has been temporarily received.
>
> "Sec. 16. The father, mother, husband, wife, brother, sister or child of a person alleged to be insane, or the sheriff or any superintendent of the poor, or supervisor of any township, or any peace officer within the county in which the alleged insane person resides, or may be, may petition the probate court of said county for an order directing the admission of said person to an asylum or institution for the care of the insane, such

petition to contain a statement of the facts upon which the allegation of insanity is based and because of which the application for the order is made. Upon receiving such petition the court shall fix a day for the hearing thereof and shall appoint two reputable physicians to make the required examination of the alleged insane person, whose certificate shall be filed with the court on or before such hearing. Notice of such petition, and of the time and place of hearing thereon, shall be served personally, at least twenty-four hours before the hearing, upon the person alleged to be insane. * * * The court shall also institute an inquest, and take proofs, as to the alleged insanity of such person, and fully investigate the facts before making such order, and, if no jury is required, the probate court shall determine the question of the sanity or insanity of such person. * * * If such person shall be found and adjudged to be insane, the court shall immediately issue an order for his admission to an asylum. * * * If the relatives or friends of such insane person shall so request, the court shall order his admission, as a private patient, to any institution, home or retreat for the care or treatment of the insane in this State, other than one of the asylums of the State, upon such relatives or friends complying with the rules and regulations of such institution, home or retreat for the admission and support of the insane person as a private patient. * * *"

Other parts of Sec. 16, together with Sec. 30, are concerned with temporary commitments, and have been quoted above. So also have Secs. 35 and 51, dealing respectively with writs of *habeas corpus* and appeals in such cases to the circuit courts of the county.

"Sec. 32. The medical superintendent may discharge any patient in the following cases: First, A patient who in his judgment, is re-

covered; Second, Any patient who has not recovered, but whose discharge, in the judgment of the superintendent, will not be detrimental to the public welfare, nor injurious to the patient: * * * A patient who has been discharged by the medical superintendent may, with the approval of the superintendent, be readmitted to the asylum under the original order of admission at any time within six months after the date of such discharge. * * *

"Sec. 34. When any person who shall have been adjudged insane and shall have been discharged from or shall not have been received into any asylum, home or retreat, petition may be presented to the court making such adjudication for a finding and order declaring such person restored to soundness of mind. * * * "

The subsequent process required is similar to that in Sec. 16 above. In this manner alone can the status of being *sui juris* be restored in Michigan after an adjudication of insanity.

Under the above sections the complainant was adjudged insane (Rec., p. 3, fols. 4-5, pars. 4-5). The adjudication was in due and lawful form for its purpose, which was in no sense a temporary one, as the answer puts it, not for a "period" (Rec., p. 32, fol. 52, par. 16), but for an indefinite "time" (Rec., p. 30, fol. 48, par. 6), and is still outstanding as ostensibly valid (Rec., 8, fols. 12-13, par. 9, and p. 33, fol. 53, par. 22). Obviously the discharge referred to in the bill (Rec., p. 24, fol. 39) and in the answer (Rec., p. 33, fol. 53, par. 22) in no wise operates to change his status. Until he has been adjudged sane under Sec. 34 above he remains civilly dead in Michigan, with all the consequences to his rights of liberty and property.

III.

The bill discloses proper subject matter of equitable cognizance, since it seeks to restore to the complainant his civil rights of citizenship, liberty and property, and his papers.

Courts of equity concern themselves with property and the maintenance of civil rights. In re *Sawyer,* 124 U. S., 200; *Green vs. Mills,* 69 Fed., 852. The civil rights of liberty and property in Michigan are restricted and impaired to the extent that he is civilly dead there, deprived of all right to sue or be sued, make contracts, engage in any business or profession, and many other rights. To a less degree this interdiction impairs and restricts his civil rights outside of Michigan, for its effect in other States is to establish a rule of evidence against him in case his sanity should be called in question at any subsequent time, operating, as the highest evidence of his insanity at the time under consideration, to raise a presumption of his insanity. This establishes as to him a special rule of procedure and burden of proof, an unusual and excessive burden and therefore a deprivation of his rights of civil liberty.

Proper subject matter for relief by equity is also disclosed in the retention of the complainant's papers as an act ancillary to the Probate Court's adjudication. The answer avers that the defendants retain them as a part of the "medical records" of Oak Grove (Rec., p. 31, fol. 50, par. 11, and p. 33, fol. 53, par. 23). This is evidently done under color of right by the following of 1903 Acts, Mich., No. 217:

> "Sec. 35. Anyone in custody as an insane person in any asylum, home or retreat, is entitled to a writ of habeas corpus, * * *

> Upon the return of such writ the fact of his sanity shall be inquired into and determined. The medical history of the patient, as it appears upon the books of the asylum, home or retreat, shall be given in evidence * * *."

The retention of the papers being wholly ancillary to the commitment and not assumed independently of it, this case is sharply distinct from *Chaloner vs. Sherman,* 242 U. S., 456. There the court assumed jurisdiction over the person and the property simultaneously, but over each independently of the other. That court had jurisdiction over the property regardless of the domicile of the respondent because the latter was served and the property was within the jurisdiction, and the court could and did act regardless of any statute dealing with the personal proceeding.

The papers are now part of the public records of the State of Michigan, available as evidence not only in that State, but in any litigation anywhere on the subject of complainant's sanity. Their value and importance for such a use is self-evident, and also evident from the determination with which the defendants cling to them. The question of the money value of the papers therefore cannot weigh, nor the rule *de minimis lex non curat* be applied, since the bill seeks to protect a valuable right to the papers which might be lost by acquiescence, and prays relief against a fraud.

Story Eq. Pl., Secs. 500, 501;
Swedesboro Church vs. Shivers, 16 N. J. Eq., 453, 457;
Linn vs. Green, 17 Fed., 407;
Allen vs. Demarest, 41 N. J. Eq., 162, 164;
Cox vs. Foley, 23 Eng. Rep., 522;
Rochdale Canal Co. vs. King, 61 Eng. Rep., 270.

IV.

In a proceeding in insanity against the person, the jurisdiction of the subject matter, the status of the respondent, lies exclusively in the State of his domicile, unless assumed by another State in the exercise of its police power, or temporarily for the purpose of removal, or an emergency.

The rule is age-old, universal and inflexible that between civilized nations the right of each to govern all within its borders is restricted by comity to the extent that to each is reserved the right to fix the permanent or general status of its own domiciled citizens or subjects. Between the States of the Union this rule has been declared by the Supreme Court to be binding law under the Constitution, subject to the provision, common also to the nations, that the States retain unimpaired their police power, which includes their right to regulate, within their borders and under their public policy, the privileges and immunities, in relation to any matter of status, of the citizens of other States upon equal terms with their own.

This rule has found its most common application, first, in connection with marriage and divorce.

Ditson vs. Ditson, 4 R. I., 87, 93, 101, 102, 106;
Hanover vs. Turner, 14 Mass., 227, 230;
Cheever vs. Wilson, 9 Wall., 108, 123;
Cheeley vs. Clayton, 110 U. S., 701, 705;
Atherton vs. Atherton, 181 U. S., 155;
Thompson vs. Thompson, 226 U. S., 551, 562;
Ross vs. Ross, 129 Mass., 243, 246 (dictum).

Andrews vs. Andrews, 188 U. S., 14, speaks most definitely. On page 41 the Supreme Court says, in nullifying a divorce decree:

> "As without reference to the statute of South Dakota and in any event domicile in that State was essential to give jurisdiction to the courts of such State to render a decree of divorce which would have extra-territorial effect, and as the appearance of one or both of the parties to a divorce proceeding could not suffice to confer jurisdiction over the subject matter where it was wanting because of the absence of domicile within the State, * * *."

Decisions concerning slavery form a second class of cases in which the rule of status is applied, and it is in the dicta of these that the rule is most easily traceable. The original or absolute power of a state over all within its borders became, with the growth of civilization, modified by the voluntary restriction of a rule of comity not affecting its police powers or public policy, and thus developed into the modern inherent power of a state. Equipped with this modern form of inherent power the colonies became States under our Constitution, which as between the States enjoined this rule of comity as binding law, save at first for the clause that "No person held to Service or Labour in one State—escaping into another, etc.," which was later abolished by the Thirteenth Amendment.

> *Polydore vs. Prince,* 1 Ware (402), 411, Fed. Cas., No. 11257, Maine, 1837 (quoting Chief Justice Shaw in the Case of the Slave Med.);

> *Strader vs. Graham,* 10 Howard, 82, 95:
>
> "Every State has an undoubted right to determine the status, or domestic and social

condition of the persons domiciled within its territory * * *."

Scott vs. Sanford, 19 Howard, 393, 422, 461;

Lemmon vs. People, 20 N. Y., 562;

Groves vs. Slaughter, 15 Pet., 449, 515, 516.

A third application of the rule is found in matters pertaining to guardianship and adoption.

In re Hubbard, 82 N. Y., 90, 94;

Woodworth vs. Spring, 4 Allen (Mass.), 321, 325, on Guardianship;

Ross vs. Ross, 129 Mass., 243, on Adoption.

Guardianship, however, has always been considered by the courts to be peculiarly a means of applying local and temporary regulation, seldom involves any question of general status, and is discussed only in the opinions, not in the judgments above.

A fourth class of cases applying the rule of status concerns matters in insanity, but here the rule is found to be tacitly assumed, rather than discussed. In the *Matter of Colah,* 2 Daly (N. Y.), 529, it is stated that jurisdiction over the insane must be grounded on either the police power or the *parens patriae* power, of which the former cannot extend beyond the boundaries of the State which exercises it, and the latter, in any permanent sense, belongs only to the domicile. In the *Matter of the Princess Bariatinsky,* S. C., 1 Phillips, 442, 41 Eng. Rep. 21 Chan., 674, it was held that as between England and Russia at that time, 1843, comity in the exercise of jurisdiction over a sojourning non-resident lunatic was discretionary in the courts, rather than mandatory on them.

See also the strong intimation in *Gasquet vs. Lapeyre,* 242 U. S., 367, 368, that in a personal proceeding in lunacy jurisdiction and due process of law can lie only in the courts of the respondent's domicile.

It is in *Andrews vs. Andrews, supra,* 188 U. S., 14, 32, that the Supreme Court definitely accepts the rule of status above and gives the reason, which applies not only to marriage but to all cases of status involving a State's public policy, that it is a fraud on the laws of the State of domicile if one of its citizens goes or is taken temporarily into another State and his general status, as to marriage, lunacy or anything else, is altered there. If this were permitted then each State could nullify the power of every other State to regulate or protect its insane persons or its marriage ties, and no State could preserve its own power of that nature. Since no such power resides in the Federal government, there would be an end of all power to regulate such matters, and the Constitution, designed to erect government, would be its destroyer. No suppositious advantage to be gained in the medical treatment of the insane could compensate for this destruction of all state power to regulate their affairs.

The ground and limit of the power of one State to regulate the status and matters incident thereto of a citizen of another is the police power.

> *Drew vs. Thaw,* 235 U. S., 432, 434, Knox's Argument;
> *Mayor, etc., of New York vs. Miln,* 11 Pet., 102, 139;
> *Moore vs. People of Illinois,* 14 How., 13.

> "But where no object of police is discernible in a State law or constitution, nor any rule of policy other than that which gives to its

> own citizens a privilege which is denied to citizens of other States, it is wholly different. The direct tendency of all such laws is partial, anti-national, subversive of all harmony which should exist among the States, as well as inconsistent with the most sacred principles of the Constitution."
>
> *Groves vs. Slaughter,* 15 Pet., 449, 516.

And when one State proposes to raid another, whether in conjunction with criminals resident in the latter or not, and kidnap and imprison her citizens, that is anarchy and civil war, at least if pursued as a business for gain.

V.

The Probate Court lacked jurisdiction of the subject matter, for the complainant was in fact a citizen of Indiana, and, aside from a bare allegation of insanity, nothing was presented in court to establish grounds on which the State of Michigan could take jurisdiction of his status for a permanent commitment.

As has been shown in the statement of facts, incident to the discussion of pars. 7 and 8 of the bill, the Probate Court intended to take jurisdiction of the general status of the complainant for the purpose of a permanent, or indeterminate, commitment, and its acts and records are in due and lawful form for that purpose. Yet for such a purpose this status was extra-territorial to the jurisdiction of both court and State, if the complainant was actually a citizen of Indiana and nothing was presented to the court but matters referring to his alleged insanity. He was present in court, and such allegations would go far if he were a

citizen of Michigan, or the adjudication was of a temporary status pending his removal, or for an emergency, or of a special status as a prerequisite to his voluntarily entering or remaining in the State, though even then a showing that he was unable to provide for himself or unsafe to others would in addition be required. In the matter of the permanent status of a citizen of any State other than Michigan, jurisdiction would require the litigation of facts which, for convenience, might be divided broadly into two classes, those pertaining to residential matters and those pertaining to the provocation of the State's police power. Jurisdiction cannot be grounded on the non-litigation of jurisdictional fact. The Probate Court could not presume in itself and the State jurisdiction of all subject matter unless disproved, nor from an allegation of insanity that the State's police power was provoked, nor from the complainant's presence in court that he was a citizen of Michigan.

The bill also avers that there was before the Probate court no allegation or evidence, proof or pretense, that it was lawful or necessary for the State of Michigan to adjudicate the complainant's status in the exercise of the State's police power or on any other pretext (Rec. pp. 7-8, fols. 11-12, Pars. 7-8), and this lack of presentation is well pleaded. Such presentation might have been made in any one of innumerable forms. It might be alleged, pleaded or testified that the complainant had committed a crime in Michigan, or was about to, or had in some way disturbed or menaced that community, whether from within or without, or that he was a citizen of that State, or of a country at war with the United States, or so remote that the rules of comity could

not be applied, or of an uncivilized community, or one never at comity with the United States, or had forfeited his citizenship in a civilized community, or entered Michigan with the intent of becoming a citizen. All conceivable grounds of this kind the bill negatives with one broad denial which states generally but with all convenient certainty the precise fact as to its legal effect. The rules of pleading require no more. Story, Eq. Pl. Secs. 23, 28, 240, 241, 253. It is sufficient if the pleading informs the defendants of the nature of the claim and enables the court to ascertain the rights of the parties and give a proper decree, *Savage v. Worsham*, 104 Fed. 18, especially if the nature of the thing pleaded will admit of no greater particularity; *Stephenson v. Southern Pac. Ry.*, 102 Cal. 143; or will admit it only at the cost of great prolixity; *Matthews v. Bailey*, 25 Miss., 33; *Lord Arlington v. Merricke*, 2 Saund., 410, 85 Rep., 1215; *Barton v. Webb*, 8 T. R. 459. Of the innumerable grounds on which a court might take jurisdiction in such cases the complainant is not required to negative one, ten, or fifty specifically and the rest generally, or to negative them by classes, as grounds generally residential and grounds generally provocative of police power, any more than as criminal and civil or creditable and discreditable. As was said in a similar case, *Shum v. Farrington*, 1 Bos. & Put., 640; 126 Rep., 1108, in response to an argument that facts must be pleaded in classes, "This, however, is but an imaginary division, for still the particulars would be unknown * * *"

The averments in the bill are sufficiently certain to enable the court to make a decree; and that the defendants were satisfied with the informa-

tion conveyed is evident since they failed to take advantage of Equity Rule 20, and require a further and better statement of the claim, or any further particulars, but definitely made their issue on the law (Rec. p. 30, fols. 48-9, Pars. 7-8).

Two additional averments fortify the above in establishing lack of jurisdiction. First, it was fully presented to the Probate court and the latter was fully apprised (Rec. p. 5, fol. 7.) that the complainant had been forcibly brought from Indiana to Flint for the special purpose of this inquisition. Defendants admit that he was brought to Flint and directly to Oak Grove the day before Burr filed his petition, but deny "personal knowledge" of what occurred prior to the complainant's arrival in Flint (Rec. p. 30, fol. 48, Par. 6). If these words include a denial that anything was presented in court as to complainant's affairs prior to that time, such as his residence, his acts provocative of police power, or anything else, then these words negative the Probate Court's jurisdiction. If the words refer only to the private knowledge of the judge and other parties, they are merely immaterial, for a judge's private knowledge might take away jurisdiction, but could never give it.

The second fortifying averment bearing on lack of jurisdiction is that the Probate judge and defendants acted well knowing that the complainant was a resident of Indiana (Rec. p. 7, fol. 11, Par. 7), and such residence being a fact and not an occurrence, would not be included in defendants' denial. This averment of the bill is sufficient to show lack of jurisdiction, even if it is construed as covering only the judge's private knowledge on the subject, for this was

a jurisdictional fact not concerned with the merits of the case, and, since there was no jury, for the sole consideration of the judge. When the actuality or fictitiousness of the litigation is under examination by bill in equity on facts *aliunde* the record, on a point of territorial jurisdiction arising as it did in this case, the test is the judge's knowledge and not the record. Otherwise a binding record might be fabricated by consent of the parties and with the connivance of the judge, using guilty or even innocently mistaken witnesses.

VI.

By arbitrary acts of the defendants, aided by their official position, the complainant was deprived of substantial rights of defense at law granted him by the statutes of Michigan.

The pleadings on this subject have been analyzed in the statement of facts, *supra*. They are found in Rec. p. 20, fol. 33, Par. 32, and p. 32, fol. 51, Par. 15. The complainant prepared his "proper" appeal, that is, one fulfilling all the requirements of law, addressed to the Circuit Court of Genesee County, Michigan. This he delivered to Burr, who took and retained it. The latter does not deny that he took and failed to file it, or present it to the court, and specifically admits that he "discouraged" the efforts of the complainant along this line, and by the strongest inference, did so effectually.

Such an appeal could only be made, and was evidently made, under the following section of 1903 Acts Mich. No. 217:

"Sec. 51. Any person aggrieved by any order, sentence, decree or denial of the probate court, may appeal therefrom to the circuit court for the same county. Such appeal shall be taken within the same time and in the same manner, and the same proceedings shall be had thereon, except as herein otherwise mentioned, as is provided in section six hundred sixty-nine to six-hundred seventy-three inclusive of the Compiled Laws of eighteen hundred and ninety seven—"

The material parts of the sections last named are—

"Sec. 669. In all cases not otherwise provided for, any person aggrieved by any order, sentence, decree or denial of a judge of probate, may appeal therefrom to the circuit court for the same county, by filing a notice thereof with the judge of probate within sixty days of the act appealed from, with his reason for such appeal, together with such bond—"

Sections 670, 671, and 672 following are given to questions of the bond on appeal, notice of appeal, and filing of the record. Then follows:

"Sec. 673. When such certified copy shall have been filed in the circuit court, with the evidence of filing the requisite bond, and of giving notice as aforesaid, such court shall proceed to the trial and determination of the question according to the rules of law; and if there shall be any question of fact to be decided, issue may be joined thereon, under the direction of the court, and a trial thereof had by jury."

This, then, grants an absolute right of appeal from the Probate to the Circuit Court, on any point without final determination for decision and return to the Probate Court, or of the whole

case for trial *de novo. Holbrook v. Cook,* 5 Mich., 229, 230; *People v. Wayne Circuit Court,* 11 Mich., 393. The bond need not be filed at the same time as the notice of appeal, in fact, it could not be. No particular form is required by the statute, the mere notice and reason being sufficient. That the complainant, ignorant of Michigan laws, and in the face of Burr's "discouragement" filed a petition for writ of habeas corpus with his appeal would not impair its validity. The appeal was a "proper" one, in form and circumstances, as is pleaded and not disputed.

The complainant was committed to the custody of Oak Grove, (Rec. p. 3, fol. 4, Par. 4) and Burr was superintendent thereof, (Rec. p. 1, fol. 2, Par. 1) and therein custodian and officer of the court, and notice to him was notice to the court. It is the unavoidable implication of the statute, as the only possible means of putting its provisions into effect, that Burr, the only accessible officer, was under a duty to forward the appeal described, and accept notice thereof in behalf of the Probate Court, or permit it to be communicated in some other manner. Burr failed to present the "proper" appeal delivered into his hands, (Rec. p. 20, fol. 33, Par. 32) but obstructed and prevented complainant's appeals at all times (Rec. p. 21, fol. 34, Par. 32). This was an arbitrary interference with a substantial right of defense belonging absolutely to the complainant by virtue of the statute of the State.

An equally arbitrary interference with this right, and with the orderly course of justice, was Burr's using his official position effectually

to "discourage" the appeal, as the answer admits. By the rules of pleading, the word must be most strongly construed against Burr, and admitting most sinister, and effectual, conduct on his part. So construed it was an abuse of his power as custodian, and an undue influence which was a most positive deprivation of complainant's substantial right of defense.

VII.

The complainant was therefore denied the due process of law. He was also denied the equal protection of the laws, was subjected to servitude without conviction of crime, and denied other constitutional rights.

Due process of law requires that the tribunal shall have jurisdiction of the subject matter. In re Kelley, 46 Fed. 653; In re Buchanan, 146 N. Y. 264; *Pennoyer v. Neff,* 95 U. S., 714, 733; Ex parte Wall, 107 U. S. 265, 290; *Bergeman v. Backer,* 157 U. S. 655; 659. That is to say, facts to show subject matter within the jurisdiction of the court must be presented to it, for the defendant is under no burden to disprove jurisdiction. Nor is it an exception that, where consent can give jurisdiction, such consent must be actually or by implication presented to the court. The bill avers that the complainant was a citizen of Indiana and that nothing but an allegation of his insanity was presented to the Probate Court to establish subject matter within the jurisdiction not only of the court but of the State of Michigan, whether on the ground of proper exercise of police power, "or on any pretext of any kind whatever (Rec. pp. 7-8, fols.

11-12, Pars. 7-8)." The answer makes no claim of jurisdiction on the ground of residence or of temporary purpose, and merely avers that the proceedings were regular, and that their purpose was that the complainant, by the force of law, "should remain there for a time and receive medical care and treatment, and that was the only purpose in instituting the proceedings (Rec. p. 30, fol. 48, Par. 6)—" and this detention was intended to be indefinite, not "for life or for any period (Rec. p. 32, fol. 52, Par. 16)." Again, as to purpose, "what was done, was done to improve his health and mental condition and for no other purpose (Rec. p. 33, fol. 53, Par. 21)." This is to admit an assumption of jurisdiction of the permanent status under the *parens patriae* power of Michigan, which was not due process.

Due process also requires an orderly proceeding in the regular course of justice according to the laws of the State applicable to the case, which shall be guided by the general rules which govern society in its protection of liberty and property, free from arbitrary interference on the part of the state government or its officers, and which shall safeguard all substantial rights, especially that of being fully heard in defense. *Davidson v. New Orleans,* 96 U. S., 97, 105; *Walker v. Sauvinet,* 92 U. S., 90, 93; *Head v. Amoskeag Co.,* 113 U. S., 9, 26; *Hallinger v. Davis,* 146 U. S., 314, 324; *Caldwell v. Texas,* 137 U. S., 692, 697; *Simon v. Craft,* 182 U. S., 427, 437. The prohibition of the Amendment applies to any act of a person by virtue of, or aided by, a public position under a state government. *Home Telephone etc., Co., v. City of Los Angeles,* 227 U. S., 278, 287.

To appeal to the Circuit Court of the county

was a substantial right of defense granted by the state statute to the complainant, to take effect on his notifying the Court of his intention to make use of it. Burr's failure to present such a notice or petition addressed to the Court and delivered to him was unquestionably an arbitrary interference with the orderly process provided by the State, wherein he was aided by his official position, and consequently a denial of the due process of law. The version which Burr specifically admits arrives at the same results. If as he says he "discouraged" effectually the complainant's appeal then he exercised undue influence by the process of misusing his official position as custodian, which was just as much an arbitrary interference with the due process of law as any act of violence.

The conduct of the defendants was a violation of the complainant's constitutional rights in other particulars. Under color of law they denied the complainant the equal protection thereof by misapplying Sec. 30 of the statute, quoted above. This requires that non-residents be admitted to asylums of the State only temporarily, pending their return to their homes, and must be construed as referring to rich and poor, to private and public asylums alike, and therefore requiring that the admissions of non-residents to private asylums under Sec. 26, *supra*, be either temporary, or limited to persons under police control. This is the only possible construction of the section which would be constitutional, but, being unprofitable, the defendants ignored it. Perusal of Sec. 26, shows that it was passed for the profit of sanitariums, but constitutionally enforced could never serve such a purpose, and that it is really a so-called "joker"

law with a concealed purpose, and serviceable only for the purpose, of lending color of law to acts like those of the defendants here. They have construed it as a declaration of war by Michigan on other States, and the issuance of letters of marque against their citizens, to say nothing of the abolition of the Thirteenth Amendment. The defendants take it as promoting and legalizing for the legal and medical professions of their State an industry analogous to a profitable fishery. Under defendants' construction these professions could lawfully, by Sec. 26, harvest the affluent and foresighted non-resident alleged lunatic and extend to him the blessings of perpetual custody and their medical and legal ministrations, unless on *habeas corpus* he could prove either sanity or indigence. Sec. 30 would prevent any loss or burden to the State of Michigan, for by it the netting of indigent and improvident non-resident alleged lunatics would be prohibited, the latter being unworthy of such ministrations, presumably for lack of diligence and character, and being also, under the public policy of Michigan, undersized and inedible. For them this section provides meshes through which to slip and escape to their homes. Sec. 26 would provide convenient public canneries adjacent to each institution in the shape of probate courts, and, properly canned and labelled therein, the non-residents seined would thereafter become articles of interstate commerce between private institutions, to promote the profits, the security from prosecution, or other purposes of the latter.

Such would be the natural consequence of the confessed acts of the defendants under their own interpretation of the Constitution and statutes,

and such must therefore be presumed to have been the defendants' purpose. It is true they aver that their only purpose was to extend medical treatment to the complainant, but such pleadings, while good as confessions that the defendants were not exercising police power, are by Equity Rule 30 nullities as evidence to establish anything further, for they are averments of new matter, are taken as denied by the complainant, and unsupported by evidence. Even if Equity Rule 30 does not so apply, the law presumes that the defendants intended the natural and inevitable legal consequences of their confessed acts. This presumption is evidence before the court quite as much as the averment that the intention was limited to extending medical treatment, and in the exercise of common sense the former must outweigh the latter.

It follows from all the above that the complainant has been deprived of rights further than that to the due process of law at the hands of a State. He is deprived of his rights under the Thirteenth Amendment, of his right to the equal protection of Michigan laws, of his right, while within the jurisdiction of Michigan, to his lawful privileges and immunities as a citizen, both of Indiana and of the United States, and of other rights.

Denunciatory language is ordinarily improper in a brief as discourteous to both Court and parties, but here the defendants have taken issue as of law on the application, and indeed the existence, of one of the moral principles which are the main props of fundamental law and civilization, and the discussion unavoidably takes on a denunciatory character. The growth of the

principle of the comity of sovereignties is coincident with the growth of civilization. To abandon the former is to abandon the latter. The insane and alleged insane are not the less subject to wrong than the sane, but the more, are not the less entitled to the care and protection of their own sovereignties, but the more. To immure, perpetually or indefinitely, a non-resident on a mere charge of insanity, and especially for profit under the guise of extending medical treatment, is equally beyond the *parens patriae* power and the police power of Michigan. To legalize and operate such a system as the pleadings disclose would be to outdo the Dark Ages. It would be more than oppressive, it would be inhuman.

VIII.

The acts of the defendants which constituted a denial of the due process of law constituted also frauds for which equity will relieve against the judgment.

From the official character of the defendants their acts constituted a denial of the due process of law, but from their character as parties to the litigation the same acts constituted also the perpetration of a fraud. Equity will relieve against a judgment for fraud if by any act of the successful parties whch was extrinsic to the merits of the case and was not and could not have been litigated before the court, the complainant was prevented from presenting his case fully to the proper tribunal. *U. S. v. Throckmorton,* 98 U. S., 61, 64. This rule applies where, in a proper case, a judgment rendered or proceed-

ing held in a state court and therein so far completed that the court can take no further action on its own initiative, is thereafter brought in question as to its actual or fictitious character before a federal court. *Marshall v. Holmes,* 141 U. S., 589, 599. It applies where the judgment has been obtained in a court without jurisdiction; *Steel v. Smelting Co.,* 106 U. S., 447; 453; Ex parte Simon, 208 U. S., 144, 148; and where the want is of jurisdiction of the subject matter; *U. S. v. Flint,* 4 Sawyer 42, Fed. Cas. 15121; *Vance v. Burbank,* 101 U. S., 514, 519; *Thompson v. Whitman,* 18 Wall., 457; *Cooper v. Newell,* 173 U. S., 555, 566. It applies also where the officers of the court have imposed upon its records the fabricated record of a fictitious proceeding; *Moffat v. U. S.,* 112 U. S., 24.

As has already been shown, one of the substantial rights under the statutes of Michigan granted the complainant was that to appeal his defense to the circuit court of the county. His properly prepared and addressed appeal of this nature he handed to Burr, the custodian, who took it, failed to file it with the court, but instead, "discouraged" such efforts. Since Burr was a party, this was as much a fraud in equity as it was a denial of due process of law.

IX.

Every requirement to justify relief by equity is satisfied.

Of the remedial legislation provided by Congress to extend the protection of the Constitution to the complainant by means of a judicial decision, he can elect to apply for the remedy of relief by decree in equity, under the accepted principles thereof. These principles permit full relief within the purpose of the bill.

Both parties agree that the record of the proceeding was in due and valid form, which is the more readily understandable since the Probate Court was one of the superior and general jurisdiction, and the barest record of its acts as described in the pleadings would make a valid and binding record, presumption supplying any deficiency; *Church v. Holcomb,* 45 Mich., 29; *Morford v. Diefenbacher,* 54 Mich., 593.

The proper remedy against a judgment valid on its face but void in fact lies by bill in equity, *Robb v. Vos,* 155 U. S., 13, 38; *Slater v. Maxwell,* 6 Wall., 268; *Cocks v. Izzard,* 7 Wall., 559; *Oelrichs v. Spain,* 15 Wall., 211, 228.

The complainant's title is to his papers and to his full civil rights of citizenship as secured by the Constitution. The injury lies in that, under color of the exercise of state authority and of a state judgment, defendants retained his papers and established against him a rule of evidence as to his sanity which lays on him a special and oppressive burden in the exercise of his civil rights, all without due process of law and in violation of other provisions of the Constitution. The same acts of the defendants con-

stituted both denial of due process and an equitable fraud, namely, their imposing on the records of the Probate Court the fabricated record of a proceeding fictitious for want of jurisdiction, and Burr's forcibly interfering with complainant's defense even there.

It is remedy or lack of it at law in the federal court, not in the state courts, that governs in determining the right to equitable relief in the former. *Smyth v. Ames,* 169 U. S., 466, 516, 517. Defendants' right to hold the papers under color of Michigan laws could not be tested in the Federal Courts by action in replevin, for lack of money value to give jurisdiction. As to his person, Burr prevented the complainant from applying to the Federal Court for a writ of habeas corpus, (Rec. pp. 20, 21, fol. 33, Par. 32) and moreover, the remedy of such writ would not be adequate to an extent to deprive equity of jurisdiction, for imprisonment is a grievous thing, and if without due process of law, no one is called upon to submit to it. Escape is not only a right but duty, and thereafter no writ of habeas corpus would lie. No statutory removal in insanity inquests lies to the Federal Court, nor do the laws of Michigan themselves disclose any reason why the complainant could not enforce his constitutional rights in that State. As to the parties, all the defendants save the present Judge and Register of the Probate Court participated in the fraud, and these two are proper parties for the discovery of the papers sought by the bill (Rec. p. 25, fol. 41).

To the proceeding in the Probate Court the complainant had meritorious defense in that he was a citizen of Indiana, and there was no

jurisdiction of the subject matter in Michigan, but for that very lack he could and need litigate nothing there. The question of laches does not enter. The bill discloses none on its face, and denies neglect in the complainant and damage to the defendants by the delay. The answer does not controvert this. Moreover, the rule of laches is applied only to ordinary business transactions, and by it to deprive a citizen permanently of his constitutional liberty and rights would be as contrary to a sound public policy as to apply it to writs of *habeas corpus.*

X.

The complainant is entitled, under the first special prayer, to a decree restoring his papers and, by necessary implication, declaring the proceedings in the Probate Court void and unconstitutional.

The gravamen of what is sought by the bill is to restore to the complainant his papers and rights of citizenship, and this would be fully accomplished by a decree granting the first special prayer, to restore the papers. Such a decree, as the prayer seeks and intends, would by unavoidable implication pronounce the acts of the Probate Court to be null and unconstitutional, for that is the only ground on which the Federal Courts could take jurisdiction or grant any relief. *Weaver v. Poyer,* 70 Ill., 567.

At present the only effect of the Probate Court's judgment is to establish a rule of evidence. *Wisconsin v. Pelican Ins., Co.,* 127 U. S., 265, 291; *Chi., and A. R. R. Co., v. Wiggins Ferry Co.,* 108 U. S., 18. It could be put to use

now only by pleading it or placing it in evidence against the complainant to bar any effort which he might make to assert his rights of state or federal citizenship within the borders of Michigan, and to establish against him a presumption of present insanity, and burden of disproof thereof, whenever his sanity might be litigated elsewhere. This restriction of his rights and excessive burden in their assertion would be neutralized by the federal decree sought. Whenever the state judgment was placed in evidence against the complainant, he might make use of the federal judgment by pleading it in traverse or exhibiting it in disproof, establishing a higher rule of evidence by virtue of the paramountcy of federal adjudications on constitutional questions. Ex parte Royall, 117 U. S., 241, 248, 249. A similar result would follow if the complainant had attacked the Probate Court's judgment by proceedings in *habeas corpus,* or in replevin of the papers, grounding jurisdiction on constitutional points. The Constitution has forbidden acts such as those of the Probate Court, and Congress has given the District Court power to enforce the ban. By this power the constitutionality and validity of the Probate Court's judgment is properly before the District Court for determination, and becomes *res judicata.* If, on the other hand, the present bill had invoked jurisdiction on the ground of difference of citizenship and value in controversy, then, by the accepted principles of equity, the decree could act only *in personam* against the parties, forbidding them to use the judgment under attack. To give effect to such a decree an injunction is vital, but in the present case the decree is one of nullity, and an injunction against the use of a null judgment is at most a convenience, not a necessity.

XI.

Under both the second special prayer and the general prayer the complainant was entitled to an injunction, whether to the Probate Court itself, or to the parties, prohibiting further use of the judgment, and if not, it was still error to dismiss the bill.

An injunction might serve to assure that there would be no further litigation of the Probate Court's judgment, and the complainant is entitled to one, whether under the second special prayer or the general prayer. No principle of equity or statute against stays of proceedings in state courts applies, even to prevent an injunction against the judge himself. Such statute was passed only to declare the existing comity between state and federal courts; *Evans v. Gorman,* 115 Fed., 339, 401. Acting outside of its territorial jurisdiction the Probate Court was not a court, nor its acts proceedings within the meaning of the statute, *Colo. Eastern Ry. Co., v. C. B. & Q. Ry. Co.,* 141 Fed., 898; but this judgment was more than a usurpation, it was a corrupt sale of the justice of Michigan for a most abhorrent purpose, and is as far outside of the spirit of the statute as of the letter. It is true the present Probate judge has in his answer affirmed the legality of these acts, but he has as yet taken no action, and if the Supreme Court for that reason does not regard an injunction against him as proper, the complainant is still entitled, under either his second special or his general prayer, to an injunction against the parties not inconsistent with the

purpose of, nor broader in effect than, the former It is a general rule that injunctions need not be in *haec verba* of the special prayer; *Thompson v. Heywood,* 129 Mass., 401, 404; they need only to be of similar effect, to meet the rule, Story Eq. Pl. Sec., 41, that the opposite party must be properly put on his defense beforehand.

Moreover, the rule requiring that injunctions be specially prayed applies only to preliminary, not to final injunctions, Daniell's Ch. Pl. and Pr. (4th Am. Ed.) 388, 1614, 1682; *Bloomfield v. Eyre,* 50 Rep., 99, 102; *Goodman v. Kine, Ibid.,* 149; *Paxton v. Douglas,* 32 Rep., 456; *Thompson v. Heywood,* 129 Mass., 401, 404; and the rule was never more than a matter of form and should not be allowed to defeat the ends of justice, *M. E. Church v. Conover,* 27 N. J. Eq., 161.

The Supreme Court has never affirmed the dismissal of a bill on grounds that the injunction specially prayed could not be granted, but only when no ground whatever was disclosed for any decree within the purpose of the bill. This is true whether the dismissal was for lack of proper subject matter, as in *Georgia v. Stanton,* 6 Wall., 50, or on account of the statute against stays by injunction of proceedings in state courts, as in *Dial v. Reynolds,* 96 U. S., 340, 341, where this Court dismissed a bill solely because no relief could be granted within its purposes, explaining—"The gravamen of what is desired is an injunction against his proceeding in a state court. Without this all else is of no account. Any other remedy would be unavailing."

Conclusion.

The brief by defendant's counsel contains nothing of moment. He says, "The facts in this case are very few and very simple", like annals of the poor, so to speak, and he might have added that the facts in his brief by no means tally with those in the record. On page 1 the brief states that the complainant "came" to Oak Grove with certain "gentlemen". The record shows (Rec. pp. 3-4,fols. 5-6, Par. 6) that the complainant was inveigled at night to a certain location in the city of his domicile, and then secretly and forcibly spirited from there to Flint, Michigan, by persons, including corrupted police (Rec. p. 20, fol. 32, Par. 30), who are nowhere disclosed to be "gentlemen", but, on the contrary, busied themselves with highway robbery of complainant's papers. Complainant was brought to Flint May 3rd, 1906 (Rec. p. 30, fol. 48, Par. 6), and the next day (Rec. p. 29, fol. 47, Par. 4) proceedings in insanity were commenced against him by defendants in the Probate Court, with the sole purpose to enforce by law "that he should remain there for a time,—" i.e. to commit him (Rec. p. 30, fol. 48, par. 6). The bill avers (Rec. p. 21, fol. 34, par. 33) that this adjudication was to enforce a life imprisonment. The answer (Rec. p. 32, fol. 52, Par. 16) avers the imprisonment was to be indeterminate, not "for life or for any period". There was no duty here to protect the State. On the contrary, it is expressly denied (Rec. p. 33, fol. 53, Par. 21). There was none to protect the complainant, and no right. The commitment, the power and justice of Michigan, were sold. The complainant was victim of the identical type of *lettre de cachet* which precipitated the French Revolution; in the most modern German phrase,

he was *spurlos versenkt*. To describe the incident by saying, "He came with gentlemen," is euphemism to excess.

On page 2 the brief contains tender references to the anxiety of and consultation with complainant's father not mentioned in the record, and therefore better pathos than argument. On page 7 the brief states that the complainant failed to raise the question of jurisdiction in the Probate Court. This could not by implied consent endow the State with jurisdiction, for the subject matter was extra-territorial to the inherent powers of the State. Assumption of jurisdiction over it therefore for the purpose of a permanent commitment, being outside of both the police and *parens patriae* powers of the State, was forbidden by the ancient rule of comity between States, and hence by the Constitution as not due process.

On page 9 the brief states that the complainant failed to appeal or apply to the circuit court of the county. Apparently counsel failed to read Record p. 20, fol. 53, Par. 32 (entire), and Rec. p. 32, fol. 51, Par. 15. Complainant did appeal, and Burr took his appeal, failed to present it, and prevented or "discouraged" it. This invalidated the proceedings both for fraud and for denial of due process, but the proceedings would have been equally invalid without an appeal, for all the courts of Michigan were alike usurpers without jurisdiction of the subject matter for the purpose of such a commitment. Complainant is not concluded by their acts, nor can the State of Michigan curtail or enlarge his rights to federal relief in equity, for they arise from the federal Constitution and acts of Congress. *Smyth vs. Ames*, 169 U.S. 466, 516.

The complainant does not, as counsel asserts, ask the Supreme Court to pass upon his sanity,

but upon an original, independent action for relief, having relation to judicial proceedings in a state jurisdiction, but grounded upon new facts, viz; that the defendants imposed upon the records of a court of justice the fabricated record of a fictitious proceeding. *Marshall vs. Holmes,* 141 U.S. 589, 599.

Nowhere in the record is it pleaded that the complainant is insane or disabled to bring this suit, and no act or record by the Probate court itself could affect complainant's right to bring this suit, the very object of which is to invalidate those acts and records. If any form of words by the Probate court could have that effect, it could render it impossible for its records and acts ever to be tested elsewhere as to their jurisdiction and actuality (*Thompson v. Whitman,* 18 Wall. 457, 468).

The pleadings establish the complainant's right to relief, at least that sought in his first special prayer. In a purely personal proceeding for a commitment, a court of Michigan took jurisdiction of his general status and deprived him of his papers and rights of citizenship, though he was a citizen of Indiana, and nothing was presented to the court to establish grounds on which the State of Michigan might take jurisdiction of the subject matter, and, furthermore, defendants, in their official capacity, arbitrarily prevented the complainant from making his proper lawful defense. The answer joins issue on the law, that such a proceeding was regular, sufficient, and due process, and the *parens patriae* power of Michigan was lawfully applied. There is no vital issue of fact, and the pleadings and circumstances satisfy every requirement for equitable relief. An injunction might be convenient to prevent further litigation, but it is not indispensable, and that

question furnishes no reason for dismissing the bill. Neither does the fact that the complainant in his bill may have misapprehended some of his legal rights on immaterial matters, and under or overstated the injuries thereto, for this is all surplusage. A bill in equity needs only one solid foundation, and this bill is grounded on the right to and deprivation of the papers. Their money value is of no moment, for under the circumstances the right to them is a valuable right, and the bill aims to suppress a fraud, and indeed, anarchy. Further advantages complainant hopes to reap from the decree, further injuries to repair, may be well or ill pleaded, or not mentioned at all; it is no matter, since they follow the decree by operation of law.

On the record, then, there is no rule of law, of equity, of procedure, of reasoning, or of justice, by which this bill could be dismissed and its prayers denied. The Supreme Court is not concerned wth the complainant's sanity, nor his clerical errors so long as the meaning is plain, nor with his inelegancies of diction, nor mistaken theories of law on immaterial points, nor his legal learning, nor the niceties of his professional workmanship in general. It is concerned alone with the plain facts well pleaded and confessed, with the principals of law and justice found in its own decisions, and with the rules of procedure it has published to the bar for their guidance. By these it is bound, and by them the dismissal of the bill was error.

WILLIAM D. WILLIAMS,
RENWICK F. H. MACDONALD,
DELL H. THOMPSON.

New York, December 1, 1917.

(25,465)

Supreme Court of the United States

October Term, 1916.

[redacted] 114

JOHN L. KETCHAM, JR., APPELLANT,

v.

COLONEL HELD BURR, DAVID S. FRAKELTON, JAMES C. McGREGOR ET AL., DEFENDANTS.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MICHIGAN.

JOHN J. CARTON,
Attorney for Defendants.

(25,165)

Supreme Court of the United States

October Term, 1916.

No. 399.

JOHN L. KETCHAM, JR., APPELLANT,
v.
COLONEL BELL BURR, DAVID S. FRAKELTON, JAMES C. McGREGOR ET AL., DEFENDANTS.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MICHIGAN.

Brief for Defendants.

The facts in this case are very few and very simple. The defendant, Oak Grove, is a corporation organized under the laws of the State of Michigan for the purpose of receiving, caring for and treating persons afflicted with nervous or mental diseases. In May, 1906, the defendant, Colonel Bell Burr, was the superintendent of Oak Grove, and has continued to be superintendent from that time until the present.

On the 3rd day of May, 1906, John L. Ketcham, Jr., the plaintiff and appellant, came to Oak Grove in company with two of his brothers and two other gentlemen,

and he was placed in Oak Grove by his brothers for care and treatment. After he had been in Oak Grove a day or two, he objected to remaining longer, and insisted that he be permitted to go free. His father was very anxious that he should remain and receive treatment, and therefore, after consultation between Dr. Burr (Colonel Bell Burr) and the father of appellant, Dr. Burr filed a petition in the probate court of the County of Genesee, the county in which Oak Grove is situated, asking that an inquest be instituted for the purpose of determining the sanity or insanity of appellant, and also asking that, if he was found to be insane, he be committed to Oak Grove as a private patient; that petition was filed in pursuance of Section 26 of Act No. 217 of the Public Acts of the State of Michigan for the year 1903, which section reads as follows:

> "Sec. 26. Whenever any person alleged to be insane, who is not a resident of this state, shall be received in any private institution, hospital, home or retreat, for the care and treatment of mental diseases, the probate court of the county in which said institution, hospital, home or retreat is located is authorized and required, on application being made to him by an officer of such institution, hospital, home or retreat, or as provided in section sixteen of this act, to appoint medical examiners, institute an inquest and proceed in such case as provided in said last named section. If such person shall be found and adjudged to be insane, the court may issue an order for his admission as a private patient to such institution, hospital, home or retreat. The expense of such examination and inquest shall be defrayed by the institution, hospital, home or retreat in which such person has been temporarily received."

Section 16, referred to in Section 26 above set forth, is as follows:

> "Sec. 16. The father, mother, husband, wife, brother, sister or child of a person alleged to be insane, or the sheriff or any superintendent of the poor, or supervisor of any township, or any peace officer within the county in which the alleged insane person resides, or may be, may petition the probate court of said county for an order directing the ad-

mission of said person to an asylum or institution for the care of the insane, such petition to contain a statement of the facts upon which the allegation of insanity is based and because of which the application for the order is made. Upon receiving such petition the court shall fix a day for the hearing thereof and shall appoint two reputable physicians to make the required examination of the alleged insane person, whose certificate shall be filed with the court on or before such hearing. Notice of such petition, and of the time and place of hearing thereon, shall be served personally, at least twenty-four hours before the hearing, upon the person alleged to be insane, and if made by a sheriff or peace officer, also upon the father, mother, husband, wife, or some one of the next of kin, of full age, of such alleged insane person, if there be any such known to be residing within the county, and upon such of said relatives residing outside of the county and within this state as may be ordered by the court, and also upon the person with whom such alleged insane person may reside, or at whose house he may be. This notice may be served in any part of the state. The court to whom the petition is presented may dispense with such personal service or may direct substituted service to be made upon some person to be designated by it. The court shall state in a certificate to be attached to the petition its reason for dispensing with personal service of such notice, and, if substituted service is directed, the name of the person to be served therewith. In such cases the court shall appoint a guardian ad litem to represent such insane person upon such hearing, and in other cases it may appoint such guardian ad litem. The court shall also institute an inquest, and take proofs, as to the alleged insanity of such person, and fully investigate the facts before making such order, and, if no jury is required, the probate court shall determine the question of the sanity or insanity of such person. If the court shall deem it necessary, or if such alleged insane person, or any relative, or any person with whom he may reside, or at whose house he may be, shall so demand, a jury of twelve freeholders, having the qualifications required of jurors in courts of record, shall be summoned to determine the ques-

tion of insanity, and whenever a jury is required the court shall proceed to the selection of such jury in the same manner as is provided for the selection of a jury for the condemnation of land for railroad purposes, and such jury shall determine the question of the sanity or insanity of the alleged insane person. The jurors shall receive the same fees for attendance and mileage as are allowed by law to jurors in the circuit court. Pending such proceedings for admission into the asylum, if it shall appear, upon the certificate of two legally qualified physicians, to be necessary and essential so to do, the court may order the alleged insane person to be placed in the custody of some suitable person, or to be removed to the asylum of the district in which he resides, or to any hospital, home or retreat, to be detained until such petition can be heard and determined: Provided, however, That the period of such temporary detention shall not exceed thirty days, unless the court shall, by special order, enlarge the time. The alleged insane person shall have the right to be present at such hearing, unless it shall be made to appear to the court, either by the certificate of the medical superintendent of the asylum, or the officers in charge of such hospital, home or retreat to which he may have been temporarily admitted, or by the certificate of two reputable physicians, that his condition is such as to render his removal for that purpose, or his appearing at such hearing, improper and unsafe. If such person shall be found and adjudged to be insane, the court shall immediately issue an order for his admission to an asylum. If, at the time of or before the making of such order, a bond for the support of such insane person, at such asylum, in accordance with the by-laws thereof, shall be executed by at least two persons to be approved by such probate court and delivered to him, together with such sum, as an advance payment toward his support, as such by-laws may require, the admission of such insane person shall be ordered as a private patient, otherwise as a public patient. Such bond and advance payment, together with the order of admission, shall be transmitted by the probate court to the medical superintendent of the asylum. Until such bond and advance payment are delivered to the medical super-

intendent, the insane person shall be admitted into the asylum only as a public patient. The county in which such proceeding is had shall be liable to the state for the support of such patient until such bond and advance payment are delivered to the medical superintendent. In case the admission of such insane person is ordered as a public patient, then the county of which such person is a resident shall be liable to the state for the support of such patient for one year. At the request of the medical superintendent, the court shall require the persons executing such bond to justify their responsibility anew, or order that a new bond be given in the place of the original one, which justification or new bond shall be transmitted to the medical superintendent, and unless such justification or new bond shall be delivered to the medical superintendent, the insane person shall, from the time of such request, be regarded as a public patient. If the relatives or friends of such insane person shall so request, the court shall order his admission, as a private patient, to any institution, home or retreat for the care or treatment of the insane in this state, other than one of the asylums of the state, upon such relatives or friends complying with the rules and regulations of such institution, home or retreat for the admission and support of the insane person as a private patient. The court may appoint a proper person or persons to take such insane person to the asylum, institution, home or retreat, who shall each receive, as pay for such services, the sum of three dollars per day, together with his necessary expenses. The court, upon making such order for admission into an asylum, if, in his judgment, a guardian of such insane person is needed before a guardian of his or her person and estate can be readily appointed, may by a separate order, and without further notice, appoint summarily a guardian of the person only of such insane person, which guardianship of the person shall continue only until a guardian both of his person and estate shall be regularly appointed. Such guardian of the person shall give a bond in such sum as may be directed by the court, and with sureties to be approved by the court. The guardian shall have the same rights and be subject to the same duties with respect to the person of his ward

as guardians of incompetent or insane persons have by law, except that he shall not interfere with the admission and detention of the insane person pursuant to the order for admission. The order for admission shall be substantially in the following form:

State of Michigan—The Probate Court for the County of .....

At a session of said court, held at the probate office in the ..... of ..... in said county, on the ..... day of ..... A. D. 19....

Present, Hon. ....., Judge of Probate.

In the matter of ....., insane.

..... having been appointed for hearing the petition of ..... praying that said ..... be admitted to the ..... as a ..... patient, and due notice of the hearing on said petition having been given as required by law and as directed by said court, the said petitioner appeared .....

It appearing to the court, upon filing the certificates of two legally qualified physicians, and after a full investigation of said matter, with ..... the verdict of a jury that said ..... is insane and a fit person for care and treatment in said asylum, and that ..... should be admitted to said asylum as a ..... patient.

It is ordered, That said ..... be admitted to said asylum as a ..... patient.

It is further ordered, That ..... be and is hereby authorized and directed to remove said ..... to said asylum, with full power and authority for that purpose.

.....
Judge of Probate.

No person shall be admitted to any such institution under such order after the expiration of thirty days from and inclusive of the date thereof."

The petition above referred to was filed in the probate court of Genesee County on May 4, 1906. Upon the filing of the petition, a citation was issued out of and under the seal of the court, and served on the appellant and the other parties interested, and the order of hearing on said petition was made, the time fixed for the hearing in said

court, being the 14th day of May, A. D. 1906, at 10:00 o'clock a. m., which hearing was on that day adjourned to May 19, 1906.

The court, in pursuance of the statute, appointed the defendants, James C. McGregor and James N. Buckham, two reputable practicing physicians in the City of Flint, to examine into the sanity or insanity of the appellant and certify the result of their examination to the court. After the citation had been served upon the appellant, he employed counsel in the City of Flint, and appeared in court on the 19th day of May, 1906, the day of the hearing, in person and by counsel, and took part, both by himself and counsel, in the hearing. The witnesses sworn in court at the hearing were Dr. Stearns, of Chicago, a specialist on mental diseases; Dr. Hodges, of Indianapolis, Indiana, the family physician of the father and mother of appellant; Drs. Buckham and McGregor, the two physicians appointed by the court, who, under oath, filed certificates of the insanity of the appellant, and several members of the appellant's own family.

Not only the appellant's counsel, but the appellant himself, took an active part in the cross-examination of these witnesses, and no question was raised either by him or his counsel as to the jurisdiction of the court, and after a full hearing the court adjudged the appellant insane, and issued its order committing him to Oak Grove as a private patient. He remained there for a short time, and then escaped, and has not been back there since.

All of the proceedings to have the appellant adjudged insane and committed to Oak Grove were regular and strictly in accordance with the statute of the State of Michigan, and if the defendant was dissatisfied or aggrieved by the decision of the probate court his remedy was to take an appeal under Section 51 of the same Act, which reads as follows:

> "Sec. 51. Any person aggrieved by any order, sentence, decree or denial of the probate court, may appeal therefrom to the circuit court for the same county. Such appeal shall be taken within the same time and in the same manner, and the same proceedings shall be had thereon, except as herein otherwise mentioned, as is provided in section six hun-

dred sixty-nine to six hundred seventy-three, inclusive, of the Compiled Laws of eighten hundred ninety-seven. If the alleged insane person is an appellee, the notice of the appeal shall be served on him and on the person having him in charge, or his guardian ad litem. The bond to be given on such appeal shall run to the judge of probate of the county for the use and benefit of any person who shall be injured by the allowance of such appeal, in such penalty and with such surety or sureties as the probate court may approve, and it shall be conditioned for the diligent prosecution of such appeal, and the payment of all such damages and costs as shall be awarded to any person on account of the allowance of such appeal in case the person appealing shall fail to obtain a reversal of the decision appealed from. Any person injured by the allowance of such appeal shall have a right of action upon such bond, in case the decision so appealed from is not reversed. Proceedings under an order of admission shall not be stayed, pending an appeal therefrom, except upon special order of the probate court, which may revoke or modify said special order at any time. The court may also, during the pendency of said appeal, make such order for the temporary care or confinement of the alleged insane person as may be deemed necessary."

Or, he could have, at any time after he had been committed to Oak Grove, petitioned the circuit court for the County of Genesee for a writ of habeas corpus to inquire into his sanity. That provision or that remedy is specifically provided by Section 35 of the statute, which reads as follows:

"Sec. 35. Anyone in custody as an insane person in any asylum, home or retreat, is entitled to a writ of habeas corpus, upon a proper petition to the circuit court of the county in which said asylum, home or retreat is situated, made by him or some friend in his behalf. Upon the return of such writ, the fact of his sanity shall be inquired into and determined. The medical history of the patient, as it appears in the books of the asylum, home or retreat, shall be given in evidence, and the superintendent or medical officer in charge of the insti-

tution wherein such person is held in custody, and any other proper person, shall be sworn touching the mental condition of such person."

And not having either taken an appeal or sued out a writ of habeas corpus, he is bound by the judgment of the probate court of Genesee County. If the appellant now claims that he has recovered from his insanity, and is now of sound mind, then his remedy is to petition the same court which adjudged him insane for an order declaring him restored to soundness of mind. That remedy is given him by Section 34 of the same Act under which he was committed, which reads as follows:

"Sec. 34. When any person shall have been adjudged insane and shall have been discharged from or shall not have been received into any asylum, home or retreat, petition may be presented to the court making such adjudication for a finding and order declaring such person restored to soundness of mind. Upon the presentation of such petition to such court by the person so adjudged insane, or by the person making the application for such adjudication, the court shall fix a time for hearing thereon, and in case the application is made by the person adjudged insane, shall cause notice of such hearing to be given to the person who applied for such adjudication, if he be found in said county, and may cause such further notice to be given as to the court seems proper. If, upon the hearing of such petition, the court, from the testimony given, shall find such person restored to soundness of mind, an order shall be entered declaring him sane: Provided, however, That the testimony of at least two reputable physicians, establishing the sanity of such person, shall be required before the finding of the court and entering of such order."

It will be seen from the foregoing that the appellant has not pursued, and is not pursuing, the remedy given him by the laws of the State of Michigan under which the proceedings to determine his sanity were instituted and carried on, and that the only remedies which he has are those heretofore pointed out. This principle was clearly settled by the supreme court of the State of Michigan in the case of In re Phillips, 154 Michigan, at page 139. In

that cause, the supreme court of the State of Michigan, speaking through Chief Justice Grant, says:

> "The order made by the probate court adjudging her mentally incompetent to have the care and control of her business, and appointing a guardian, makes no reference to the judge's finding of facts. No jurisdictional questions are raised. No attack is made upon the regularity of the proceedings. It is sought now by the discretionary writ of certiorari to review the case in this court upon the merits, and have this court determine whether upon the finding made by the probate court the adjudication as to the mental condition and capacity of Mrs. Phillips was correct.
>
> "Counsel cite no precedent for this proceeding. *The statute provides for an appeal to the circuit court.* The testimony taken before the probate court is not before us, but only the conclusion of the probate judge as to the facts to be drawn therefrom. The writ of certiorari is not usually allowed where there is another and adequate remedy.
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> * * * * * * * *
>
> *"The probate court (and, upon appeal, the circuit court) is the proper forum in which to determine the fact of mental incapacity.* The person charged with such incapacity is entitled to a finding by a jury as to his mental condition, if he so elect. The verdict of the jury would be conclusive if there was evidence to sustain it. We can no more weigh the evidence in a case when a jury has determined the question than in a case where the court has determined it."

We therefore submit that the appellant in not following the remedy given him by the statutes of the State of Michigan is bound by the judgment of the probate court, and is without any further remedy except to petition the same court, in which he was adjudged insane, for an order declaring him restored to soundness of mind. In filing the bill of complaint which appellant has filed in this cause he has virtually asked the court to pass upon his sanity, and we submit that this court has no jurisdiction to try that question in this proceeding. The question involved here must be tried in a court of law, and the appellant

having a full, adequate and complete remedy at law, equity will not take jurisdiction.

The appellant in this cause having been adjudged insane by the probate court of the County of Genesee, and that judgment never having been appealed from nor set aside, and being now in full force and effect, he is an insane person, within the meaning of the law, and is not entitled to bring any suit or proceeding in his own name in any court, either state or federal, if he otherwise would have a right, until he has procured an order adjudging him restored to soundness of mind.

As we have said before, this court has no jurisdiction in this case; it is not a court to try questions of insanity. There is no federal question involved. The appellant has not pursued the remedy given him by the statutes of the State of Michigan, and he has now no right to bring any action of any kind in this court.

JOHN J. CARTON,
Attorney for Defendants.

KETCHAM *v.* BURR ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MICHIGAN.

No. 114. Submitted January 2, 1918.—Decided January 14, 1918.

Appellant, having been for a time confined in an asylum as an insane person after due proceedings in a state probate court, took no appeal or other proceedings in the state courts, but long after his escape

filed this bill against the owner and officials of the asylum, the present and former judges and registers of the probate court, and others, to regain certain documents and set aside the inquisition. *Held*, that no construction or application of the Constitution was involved, and hence this court lacked jurisdiction of a direct appeal from the District Court.

Appeal dismissed.

THE case is stated in the opinion.

Mr. William D. Williams, *Mr. Renwick F. H. MacDonald* and *Mr. Dell H. Thompson* for appellant.

Mr. John J. Carton for appellees.

MR. JUSTICE MCREYNOLDS delivered the opinion of the court.

Having heard the cause upon bill, answer and replication, the District Court dismissed the bill. In support of this direct appeal it is said that the construction or application of the Federal Constitution is involved. Judicial Code, § 238.

The defendants are the corporation which owns and operates Oak Grove asylum in Genesee County, Michigan; the medical director and chief guard of that institution; the present and a former judge, and also the present and a former register of the Probate Court of Genesee County; two examining physicians who upon an inquest held before that court certified complainant's insanity; and the attorney who represented the petitioner therein.

The bill is a nebulous recital of grievances against defendants and many others—all alleged to have been wicked conspirators seeking to deprive appellant of his liberty and money. It appears that the appellant, a citizen of Indiana, having effected his escape from an

insane asylum in Wisconsin was taken by his family and friends to Oak Grove for medical care and treatment in May, 1906; and that directly thereafter a petition asking an inquisition concerning his sanity was duly presented to the Probate Court by the superintendent of that institution as provided by a state statute. After a hearing he was adjudged insane and committed for treatment; the right to appeal was not exercised. In October, 1906, he escaped, and this bill was filed May 11, 1912, without prior application for relief to any court of the State. It prays (1) that defendants be required to give an account of and restore to complainant all writings, letters, documents and papers placed in their hands in connection with the inquisition, and (2) that the judge and register of the Probate Court be required to set aside and hold for naught the pretended inquisition in insanity and make adequate entry accordingly on the record.

All equities of the bill are fully denied in the answer; and the claim that the cause really involves construction or application of the Federal Constitution is without foundation.

We have no jurisdiction to entertain the appeal and it must be

Dismissed.